

**UNITED STATES CIRCUIT COURT OF
APPEALS**

FOR THE NINTH CIRCUIT

U. S. OIL & LAND COMPANY, A Corporation,
Appellant.

vs.

Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased; George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell; John Llewellyn Auzerai and P. J. Crosby, W. P. Hammon and F. C. Van Deinse, Associated Oil Company, Union Oil Company, and Catherine M. Bell, also known as Kate M. Bell,

Appellees.

TRANSCRIPT OF RECORD

**Upon Appeal from the United States District
Court, Southern District of California,
Southern Division**

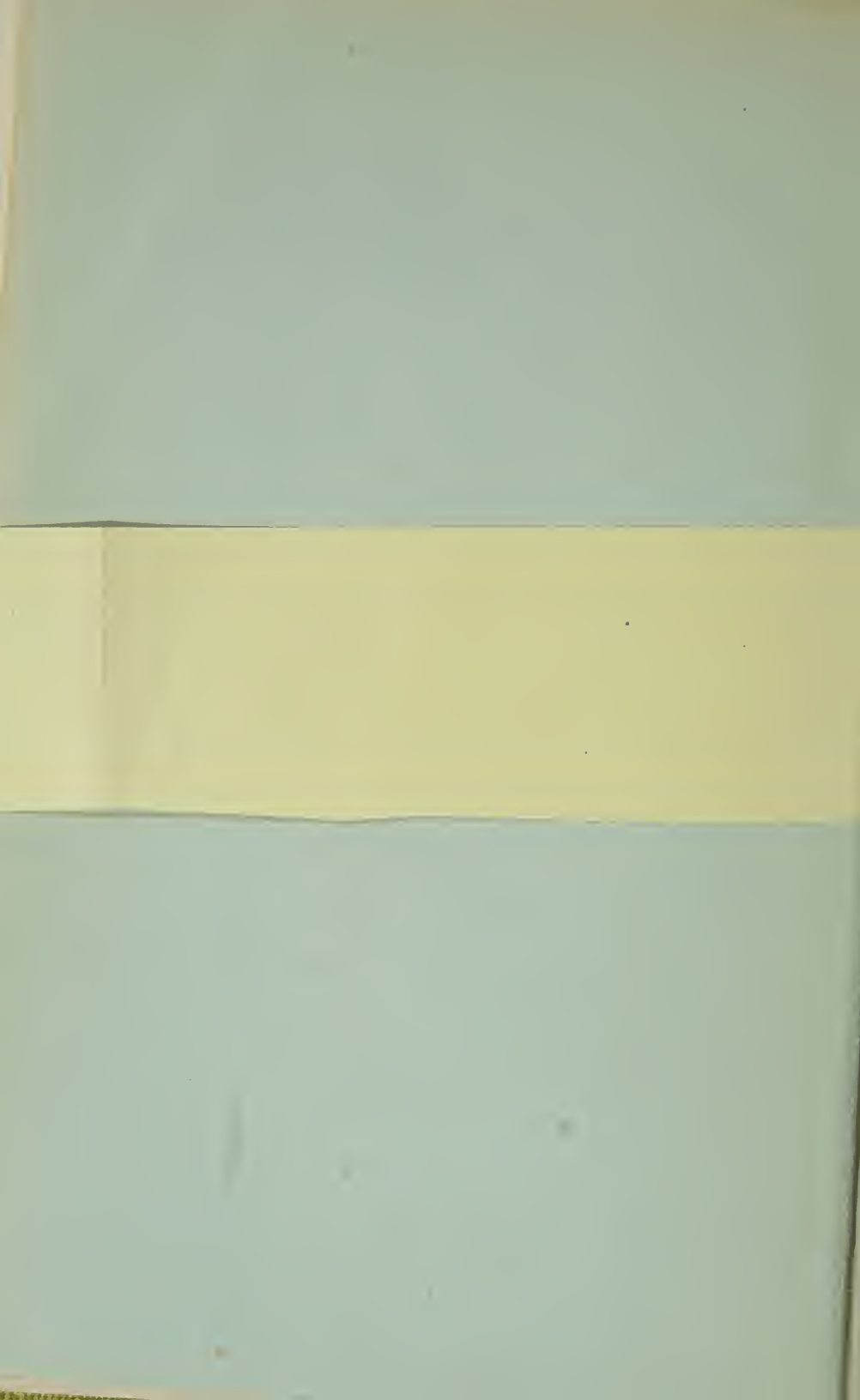
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Clerk

Records of U.S. Circuit
Court of Appeals
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UNITED STATES CIRCUIT COURT OF AP-
PEALS, FOR THE NINTH CIRCUIT.

U. S. OIL & LAND COMPANY, a corporation, Ap-
pellant,

vs.

Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed; Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell; Teresa Bell; T. M. Bell; Elizabeth M. Bell; Muriel Bell, also known as Muriel Margaret Bell; Robina Bell; Catherine M. Bell, also known as Kate M. Bell; Marie T. Holman, formerly Marie T. Bell; Arthur S. Holman, husband of Marie T. Holman; Henry G. Meyer; Josephine M. Holbrook; John Lewellyn Auzerai; Daniel A. McColgan; Peter J. Crosby; Robina Vellguth; George Henry Howard; O. H. Harshbarger; Alexander D. Keyes; Thomas E. Palmer; Florence Adele Gibson; C. H. Williams; Charles H. Pearson; Peter Guidotti; George Guidotti; Guidotti Bros.; Baptiste Ferrini; Henry N. Evans; J. S. Evans; J. Doherty; Joseph Smith; Jose Pico; John Doherty; Dario de la Guerra; William Gewe; John S. Bell; R. McColgan; Reginald McColgan; Clarence Vellguth; W. P. Hammon; F. C. Van Deinse; C. A. Hunt; George Henry Howard as executor of the last will and testament of George Staacke, deceased; Union Oil Company of California, a corporation; Mercantile Trust Company of San Francisco, a corporation; San Francisco Savings Union, a corporation; Savings Union Bank and Trust Company, a corporation; The Associated Oil Company, a corporation; The Associated Transportation Company, a corporation; Rauer Law and Collection Company, a corporation; Rauer's Law and Collection Company, a corporation; John Doe; James Doe; John Roe; James Roe; Jane Doe; Jane Roe; Mary Doe; Mary Roe; Richard Roe; Henry Roe, and Kate Roe, Appellees.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United States of America, in and for the Southern District of California. Southern Division.

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NAMES AND ADDRESSES OF SOLICITORS AND COUNSEL.

For Appellant, U. S. Oil & Land Company, a corporation: Richards & Carrier, Fithian Building, Santa Barbara, California; James L. Crittenden, Barclay Henley and Jacob M. Blake, 667 Mills Building, San Francisco, California.

For Appellees, Teresa Bell, etc., et al.: T. Z. Blake-man, 420 Phelan Building, San Francisco, California.

For Appellees, Thomas Frederick Bell et al.: Peter J. Crosby, Room 9, 1007 Broadway, Oakland, California.

For Appellees, W. P. Hammon and F. C. van Deinse: Chauncey S. Goodrich, and Charles W. Slack, Alaska Commercial Building, San Francisco, California.

For Appellee, Associated Oil Company: Edmund Tauszky, Wells Fargo Building, San Francisco, California.

For Appellee, Union Oil Company of California: Lewis W. Andrews, and Thos. O. Toland, Union Oil Building, Los Angeles, California.

For Appellee, A. S. Holman: A. E. Bolton, Monadnock Building, San Francisco, California.

For Appellee, Catherine M. Bell: Sullivan, Sullivan & Theo. J. Roche, San Francisco, California.

United States of America, ss:

The President of the United States,

To Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased; Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell and to your Solicitor, T. Z. Blake-man:

To Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerais and P. J. Crosby, and to Peter J. Crosby, your solicitor:

To W. P. Hammon and F. C. van Deinse and to Chauncey S. Goodrich, your solicitor:

To Associated Oil Company and Edmund Tauszky, your solicitor:

To Union Oil Company and to Lewis W. Andrews and Thomas O. Toland, your solicitors:

To Catherine M. Bell, also known as Kate M. Bell, and to Sullivan and Sullivan and Theo. J. Roche, your solicitors.

Greeting: You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Southern District of California, Southern Division, wherein U. S. Oil & Land Company is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that

behalf.

Witness, the Honorable Erskine M. Ross, United States Circuit Judge for the Ninth Circuit, this 14th day of January, A. D. 1914.

Erskine M. Ross,
United States Circuit Judge.

United States of America, ss:

On this 16th day of January in the year of our Lord one thousand nine hundred and fourteen, personally appeared before me Paul P. O'Brien, Deputy Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the subscriber, Jacob M. Blake and makes oath that he delivered a true copy of the within Citation to James O. Toland, one of the solicitors for the defendant, Union Oil Company, at Los Angeles, California, on the fourteenth day of January, 1914; and to T. Z. Blakeman, solicitor for the defendants; Teresa Bell, as administratrix of the estate of Thomas Bell, deceased; George Henry Howard, O. H. Harshberger, George Henry Howard, as the executor of the will of George Staacke, deceased; Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell; and to Peter J. Crosby, solicitor for the defendants, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerai, Peter J. Crosby; and to Chauncy S. Goodrich, one of the solicitors for the defendants, W. P. Hammon and F. C. van Deinse; and to Edmund Tauszky, solicitor for the defendant, Associated Oil Company; and to Theo. J. Roche, one of the solicitors for the defendant, Catherine M. Bell, also known as Kate M. Bell, and to each of them, at San Francisco, California, on the fifteenth day of January, 1914.

Subscribed and sworn to before me at San Francisco, California, this 16th day of January, A. D. 1914.

Jacob M. Blake.

Paul P. O'Brien,

Deputy Clerk U. S. Circuit Court of Appeals for
the Ninth Circuit. (Seal)

Due service of the within citation by receipt of a
copy is hereby admitted at California this 14th day of
January, 1914.

Lewis W. Andrews.

Thos. O. Toland,

Solicitor for defendant Union Oil Company.

Sullivan & Sullivan and Theo. J. Roche,

Solicitors for defendant Catherine M. Bell, etc.

Service of the within citation by receipt of a copy is
hereby admitted this 15th day of January, 1914.

Charles W. Slack,

Chauncey S. Goodrich,

Solicitors for W. P. Hammon and F. C. Van Deinse.

Edmund Tauszky,

Solicitor for Associated Oil Co.

(Endorsed) No. 140 Civil. In Equity. In the Dis-
trict Court of the United States in and for the Southern
District of California, Southern Division. U. S. Oil &
Land Company, Complainant, vs. Teresa Bell, as ad-
ministratrix etc., et al., Defendants. Citation on Appeal.
Filed Jan. 17, 1914. Wm. M. Van Dyke, Clerk. By
Chas. N. Williams, Deputy Clerk.

In the District Court of the United States of America,
in and for the Southern District of California,
Southern Division.

No. 140 Civil. In Equity.

U. S. Oil & Land Company, a corporation, Complainant,
vs.

Teresa Bell as administratrix of the estate of Thomas
Bell, deceased, with the will annexed; Thomas Fred-
erick Bell; Bessie M. Bell, wife of Thomas Frederick
Bell, also known as Elizabeth M. Bell; W. E. Bell,
also known as Eustace Bell; Reginald Bell, Teresa
Bell, T. M. Bell, Elizabeth M. Bell, Muriel Bell, also
known as Muriel Margaret Bell; Robina Bell, Cath-

erine M. Bell, also known as Kate M. Bell; Marie T. Holman, formerly Marie T. Bell; Arthur S. Holman, husband of Marie T. Holman; Henry G. Meyer; Josephine M. Holbrook, John Lewellyn Auzerai, Daniel A. McColgan, Peter J. Crosby, Robina Vellguth, George Henry Howard, O. H. Harshbarger, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, C. H. Williams, Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, Henry N. Evans, J. S. Evans, J. Doherty, Joseph Smith, Jose Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, R. McColgan, Reginald McColgan, Clarence Vellguth, W. P. Hammon, F. C. van Deinse, C. A. Hunt, George Henry Howard, as executor of the last will and testament of George Staacke, deceased; Union Oil Company of California, a corporation; Mercantile Trust Company of San Francisco, a corporation; San Francisco Savings Union, a corporation; Savings Union Bank and Trust Company, a corporation; The Associated Oil Company, a corporation; The Associated Transportation Company, a corporation; Rauer Law and Collection Company, a corporation; Rauer's Law and Collection Company, a corporation; John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Mary Roe, Richard Roe, Henry Roe, and Kate Roe, Defendants.

In the District Court of the United States for the Southern District of California, in and for the Southern Division.

U. S. Oil & Land Company, a corporation, Complainant,

vs.

Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, with the will annexed; Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, Teresa Bell, T. M. Bell, Elizabeth M. Bell, Muriel Bell, also known as Muriel

Margaret Bell; Robina Bell, Catherine M. Bell, also known as Kate M. Bell; Marie T. Holman, formerly Marie T. Bell; Arthur S. Holman, husband of Marie T. Holman; Henry G. Meyer, Josephine M. Holbrook, John Lewellyn Auzerai, Daniel A. McColgan, Peter J. Crosby, Robina Vellguth, George Henry Howard, O. H. Harshbarger, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, C. H. Williams, Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, Henry N. Evans, J. S. Evans, J. Doherty, Joseph Smith, Jose Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, R. McColgan, Reginald McColgan, Clarence Vellguth, W. P. Hammon, F. C. Van Deinse, C. A. Hunt, George Henry Howard, as executor of the last will and testament of George Staacke, deceased; Union Oil Company of California, a corporation; Mercantile Trust Company of San Francisco, a corporation; San Francisco Savings Union, a corporation; Savings Union Bank and Trust Company, a corporation; The Associated Oil Company, a corporation; and Associated Transportation Company, a corporation; and Rauer Law and Collection Company, a corporation; Rauer's Law and Collection Company, a corporation; John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Mary Roe, Richard Roe, Henry Roe and Kate Roe, Defendants.

BILL IN EQUITY.

To the Honorable, the Judges of the District Court of the United States in and for the Southern District of California:

1—The U. S. Oil & Land Company, a corporation formed and organized by and under the laws of the Territory of Arizona, and now a corporation existing by and under the laws of the State of Arizona and a citizen of said State of Arizona, brings this, its Bill, against the defendants above-named and against each of said defendants, and for cause of action and complaint against said defendants and against each of said defendants your orator, said U. S. Oil & Land Company, complains, avers and says:

1st—That, as your orator is informed, advised and believes, the Territory of Arizona under and by the laws of which your orator, said U. S. Oil & Land Company, was formed, organized and existed as a corporation, has been admitted and become a State and one of the United States of America, and is now a State and one of the United States of America; that it was and is provided and declared in and by the Constitution of said State of Arizona that all laws of the Territory of Arizona in force at the time of the adoption of said Constitution should remain in force as laws of the State of Arizona until they expired by their own limitations or were altered or repealed by law, and also that no rights or contracts existing at the time of admission of said State of Arizona into the Union should be affected by a change in the form of government from territorial to state; that by and under the provisions of said Constitution your orator became and is a corporation existing under the Constitution and laws of the State of Arizona;

That the complainant is the owner in fee simple absolute of an undivided one-half of all that certain tract, piece and parcel of land situate, lying and being in the County of Santa Barbara, State of California, consisting of 10,067.2 acres, bounded and described as follows, to-wit:

Commencing at a post in a deep ravine on the southern boundary line of the Rancho de Los Alamos, being station number two (2) of County Survey number three hundred and fifty-seven (357), made May 31st, A. D. 1867, for James B. Shaw, from which station number one (1) of the official survey on the southeast corner of said rancho bears south seventy-seven and one-fourth degrees east ($77\frac{1}{4}^{\circ}$ E.) eighty-five chains and seventy-two links distant; thence running north seventy-seven and one-fourth degrees west along the southern boundary line of said rancho one hundred and seventy-nine chains to a post on the south slope of a high mountain range, being station number two of County Survey number three hundred and fifty-eight, made for Thomas Bell; thence running north three and one-half degrees

east two hundred and twenty chains and eighty-four links to station number three of said County Survey; thence running north five and three-fourths degrees east three hundred and eighty-five chains and nine links to the northern boundary line of said rancho at a point sixteen chains and ninety-seven links west of a post marked A. No. 6; thence running east along the said northern boundary line of said rancho sixteen chains and ninety-seven links to said post marked A. No. 6 of the official survey of said rancho; thence running south forty chains along the line of said official survey of said rancho; thence running east forty chains along the northern line of said official survey; thence running south fifty-nine and one-fourth degrees east and along the said northern line of said official survey one hundred and twenty-nine chains and six links to station number four of County Survey number three hundred and fifty-seven; thence running south five and three-fourth degrees west along the western line of said County Survey number three hundred and fifty-seven, three hundred and eighteen chains and twenty-eight links to station number three of said survey; thence running south three and one-half degrees west and along the line of said survey two hundred and twenty chains and eighty-four links to the place of beginning; containing ten thousand and sixty-seven and two-tenths acres of land, and being a part of the Rancho de Los Alamos, and being the ten thousand and sixty-seven and two-tenths acres of land conveyed by Thomas Bell to John Stewart Bell by deed dated October 19th, A. D. 1874, and recorded October 27th, A. D. 1874, in the office of the County Recorder of the County of Santa Barbara, State of California, to which deed and conveyance reference as to the description of said land is hereby made; excepting and reserving from the lands above described all the town lots in the town of Los Alamos sold and conveyed by deed by John S. Bell prior to the 7th day of April, 1887, the same being laid down and shown upon a certain map entitled "Map of the Town of Los Alamos, situated in the County of Santa Barbara, surveyed for J. B. Shaw

and John S. Bell September 15th, 1876. W. W. Bagster, Surveyor," and recorded in said Santa Barbara County Recorder's office at the request of J. B. Shaw on February 1st, 1879, in Book "B" of Miscellaneous Records, page 406, and thereon numbered as follows: Lots four (4), six (6), seven (7), eight (8), nine (9), eleven (11), fourteen (14) to twenty-two (22), both inclusive, and twenty-five (25) in Block four (4); Lots eight (8), nine (9), fourteen (14), fifteen (15), sixteen (16), nineteen (19) and twenty (20) in Block five (5); Lots five (5) and six (6) in Block six (6); Lots one (1) to thirteen (13), both inclusive, Lot sixteen (16) and lots eighteen (18) to twenty-six (26), both inclusive, in Block eight (8); all of Block nine (9), except Lots twenty-one (21) and twenty-two (22); all of Block sixteen (16), excepting Lots twelve (12), thirteen (13), twenty-three (23), twenty-four (24), twenty-five (25) and twenty-six (26); all of Block seventeen (17), except Lots one (1), two (2), three (3), four (4), five (5), six (6), nineteen (19), twenty (20) and twenty-one (21); Lots twenty (20), twenty-one (21) and twenty-two (22) in Block eighteen (18); Lots one (1) to nine (9), both inclusive, in Block twenty (20); Lots six (6) to nineteen (19), both inclusive, in Block twenty-one (21); also excepting all the land conveyed or donated prior to June 7th, 1887, by said John S. Bell for county roads, streets and railroads, and the rights of the purchasers of lots in said town of Los Alamos to the use of the streets and highways therein; also the cemetery plot adjoining said town conveyed by said John S. Bell by deed of June 17th, 1885; also excepting therefrom the following described lots, pieces and parcels of land sold and conveyed by Dwight W. Grover and Samuel Rosner since August 23rd, 1887, to-wit: Lots twenty-three, twenty-four and twenty-six in Block four; Lot five in Block four; Lots one, two, three and four in Block twenty-one; Lot twenty-one in Block nine; Lots three and thirteen in Block four; Lots three, four, six, seventeen, eighteen, twenty-one and twenty-two in Block five; Lots nineteen, twenty and

twenty-one in Block seventeen—all of the town of Los Alamos; Tract number twenty-eight (28), containing four and one-fourth acres; Tracts numbers fifty-one (51), fifty-two (52) and fifty-three (53), containing fifteen acres, and Tract number twenty-three (23), containing four and 31-100 (4.31) acres of land, of Grover, Rosner and Irwin's Subdivisions of the Los Alamos Rancho;

2d—That said defendant San Francisco Savings Union is and during all the times herein mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the city and county of San Francisco, in said State of California;

3d—That said defendant Mercantile Trust Company of San Francisco is and during all the times hereinafter mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City and County of San Francisco, in said State of California;

That on the 16th day of October, 1892, said Thomas Bell died testate in the City and County of San Francisco, State of California, a resident of said city and county, leaving property therein, both real and personal; that the last will and testament of said Thomas Bell was by an order of the Superior Court of the City and County of San Francisco, State of California, duly made and given on the 7th day of November, 1892, admitted to probate; that on the 7th day of November, 1892, by an order of Court duly given and duly made, George Staacke and John W. C. Maxwell and one Henry Pichoir, the executors named in said will, were duly appointed the executors of the last will and testament of said Thomas Bell, deceased, and each of them on the 7th day of November, 1892, duly qualified and entered on the discharge of their duties as such executors; that thereafter, on the 30th day of December, 1892, said Henry Pichoir renounced his trust as such executor, and his resignation as such executor was on that day duly

accepted by the Court and he was discharged from his duties as such executor; that thereafter and on the 13th day of September, 1898, the resignation of John W. C. Maxwell, as such executor, was by order of said Court in the matter of said estate accepted and said Maxwell ceased to be executor of said estate; that thereafter and on the 4th day of May, 1900, an order was duly made and entered in said Superior Court in the matter of said estate of Thomas Bell, deceased, revoking the letters testamentary that had been issued to said Gorge Staacke, and said George Staacke ceased to be executor of the estate of said Thomas Bell, deceased; that thereafter and on the 2d day of February, 1902, said Teresa Bell filed a petition in the matter of the estate of Thomas Bell, deceased, praying that letters of administration of the estate of Thomas Bell, deceased, with the will annexed, be granted and issued to her, and that such proceedings were had and taken in the matter of said estate that an order was duly made therein by said Superior Court of the City and County of San Francisco on the 13th day of February, 1902, appointing said Teresa Bell administratrix of the estate of Thomas Bell, deceased, with the will annexed, and said order was duly filed and entered on the 19th day of February, 1902, and letters of administration of the estate of Thomas Bell, deceased, with the will annexed, were duly issued to said Teresa Bell; that said Teresa Bell on said 19th day of February, 1902, duly qualified as administratrix of the estate of Thomas Bell, deceased, with the will annexed, and has ever since been and now is the administratrix of the estate of Thomas Bell, deceased, with the will annexed;

4th—That the defendant Rauer's Law and Collection Company is and during all the times hereinafter mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California;

5th—That the defendants above and in this complaint named and mentioned claim and assert, and each of them claims and asserts an estate or interest in said

above described tract, piece and parcel of land and in every part thereof adverse to the complainant; that said claims are and each of said claims made by each of said defendants is wrongful and unlawful and without any right whatever, and that said defendants have not and each of said defendants has not any right, title, estate or interest whatsoever in or to the undivided one-half of said tract, piece and parcel of land of which plaintiff is owner, or in or to any part or portion thereof.

6th—That, as your orator is informed and believes, the true name of said Robina Bell is Robina Vellguth; the true name of said R. McColgan is Reginald McColgan, and the true name of said Rauer Law and Collection Company is Rauer's Law and Collection Company; that the plaintiff has designated said defendants by both names, as it has no personal knowledge as to their true or full names.

7th—Your orator further complaining, shows, avers and alleges upon information and belief that on the 29th day of June, 1901, a judgment and decree was duly made and rendered in and by the said Superior Court of Santa Barbara County and Hon. W. S. Day, Judge thereof, and was duly filed therein on said 29th day of June, 1901, in said Superior Court by C. A. Hunt, County Clerk of said County of Santa Barbara and Clerk of said Superior Court, in an action then pending in said Superior Court entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," and in which action Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, at her request as such administratrix had been substituted by order of said Superior Court made in said action as defendant in place of defendants George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased; that the said judgment and decree so rendered, made and filed on the 29th day of June, 1901, was thereafter duly entered on the 9th day of July, 1901, by the Clerk of said Superior Court in the records and Judgment Book of said Superior

Court; that said judgment and decree was entitled in said action and cause and was in the words and figures following, to-wit:

"The above-entitled action having come on in its regular order on the calendar for trial on the twenty-second day of June, 1900, upon the pleadings hereinafter mentioned before the above entitled Court sitting without a jury, the Hon. W. S. Day, Judge of said Court, presiding; and the trial of said action having thereupon and thereafter proceeded with on the 22d, 23d, 25th, 26th, 27th, 28th, 29th and 30th day of June, 1900, and on the 2d day of July, 1900, and submitted to the Court for decision, Richards & Carrier, Esqs., and James L. Crittenden, Esq., appearing as attorneys for the plaintiff on said trial, and Canfield & Starbuck, Esqs., appearing on said trial as attorneys for defendant George Staacke and for Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, and T. Z. Blakeman also appearing on said trial as attorney for said defendant Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, and oral and documentary evidence having been introduced on said trial by the parties, respectively, and said attorneys having thereafter duly served and presented and submitted to the Court their briefs for and on behalf of the parties to said action, respectively, and said action having been duly submitted to the Court for decision, and the Court having heard and duly and fully considered all the evidence and the briefs and arguments of said attorneys and counsel, and having thereafter and on the 6th day of March, 1901, duly made, rendered and filed its decision consisting of findings of fact and conclusions of law, and the Court having thereafter and on the 7th day of June, 1901, amended its decision; and said action having been tried and said trial had upon the following pleadings and amendments of the pleadings of the several parties to said action, to-wit:

The amended and supplemental complaint, filed June 9th, 1897, the answer to the plaintiff's amended and supplemental complaint, filed June 10th, 1897, the

amendment to plaintiff's amended and supplemental complaint, filed June 12th, 1897, the amendment to plaintiff's amended and supplemental complaint, filed August 11th, 1898, the stipulation annexed to said last named pleading and filed therewith August 11th, 1898, the amended cross-complaint of defendants, filed April 21st, 1896, amended answer to amended cross-complaint, filed June 11th, 1897, amendment to amended answer to amended cross-complaint, filed August 11th, 1897.

Now, therefore, it appearing to the Court that the complaint and summons in said action were duly and personally served upon defendants George Staacke, George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, and that thereafter each of said defendants duly appeared and filed an answer in said action; and that on the 9th day of June, 1900, upon proceedings had and taken and upon the order of this Court and Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, was made and substituted a defendant in said action in the place of George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and that on the 7th day of January, 1901, upon a motion duly made by and on behalf of Katherine M. Bell and James L. Crittenden, and upon it appearing to the Court that since the commencement of this action the original plaintiff, John S. Bell, had deed and conveyed and parted with said land mentioned and described in said paragraph 11 of said amended and supplemental complaint, and all his right, title and interest therein, and that said Katherine M. Bell and James L. Crittenden had succeeded to all the right, title and interest of John S. Bell in and to said lands described in said paragraph 11, and to all the rights of action of said John S. Bell, the said Katherine M. Bell to an undivided one-half thereof, and the said James L. Crittenden to an undivided one-half thereof, the Court by its order, duly made, ordered that said action be continued in the name of the original plaintiff.

And it further appearing to the Court that each

and all of the proceedings hereinabove in this decree mentioned were duly had and that the said Katherine M. Bell and James L. Crittenden as successors in interest to John S. Bell are entitled to the relief prayed for in said amended and supplemental complaint, and to the relief hereinafter granted, it is ordered, adjudged and decreed as follows, to-wit:

First: That George Staacke, one of the defendants in this action, make, sign and acknowledge, execute and deliver a good and sufficient deed and conveyance to Katherine M. Bell and James L. Crittenden each of an undivided one-half of the following described lands, to-wit: All that real property situate in the County of Santa Barbara, State of California, forming a part of the rancho known as "Rancho de Los Alamos," to-wit:

(Same description of 10062.2 acres tract of land as on pages 6, 7, 8 and 9.)

Secondly: That said George Staacke did not become by or by reason of the execution and delivery of the deed and conveyance made to him by Dwight W. Grover and Samuel Rosener, dated March 7th, 1889, and has not been since the execution of said deed and is not now vested with the legal title to all or to any part or portion of the land mentioned and described in said paragraph 11 of said amended and supplemental complaint in trust for said Thomas Bell, or to secure the payment of any sum or sums of money that were at any time advanced by said Thomas Bell to said John S. Bell; and that said George Staacke never has had and has not now any beneficial or other interest in or to said land or real property mentioned and described in said paragraph 11 and in this decree or in or to any part or portion thereof, or in or to any of the rents, issues or profits thereof; and that said George Staacke received and holds the naked legal title to all of the lands and real property conveyed to him by said Dwight W. Grover and Samuel Rosener for the sole purpose of conveying and to convey to the plaintiff all of that portion of the tract of land mentioned and described in said paragraph 11 so conveyed by said deed of March 7th, 1889, to him, said

Staacke, and to convey to said Thomas Bell or his heirs all that portion of the tract of land described in paragraph 11 of said amended and supplemental complaint, and for no other purpose whatsoever; and that said George Staacke had no power or authority by or under the terms of the trust upon, or under which said lands were so as aforesaid conveyed to him by said deed of March 7th, 1889, or otherwise, to borrow any money upon said lands or upon any part or portion thereof, or to mortgage said lands or any portion thereof or to deed or convey in trust or otherwise said lands or any part or portion thereof as security for the payment of any moneys borrowed by said George Staacke or by said Thomas Bell; and that said George Staacke had no power or authority as such trustee or otherwise to borrow \$60,000 or any other sum of money from the San Francisco Savings Union or to make any deed of conveyance to Thaddeus B. Kent and Henry C. Campbell of said lands or of any part or portion thereof in trust for the payment of \$60,000 or any other money or moneys borrowed from the San Francisco Savings Union; and that the borrowing of \$60,000 from the San Francisco Savings Union, and the making, execution and delivery by said George Staacke to said Henry C. Campbell and Thaddeus B. Kent of a deed of trust to secure the payment of \$60,000 was wrongful and in violation of the trust upon and under which said lands and real property were deeded to and held by said George Staacke; that said George Staacke did on or about the first day of February, 1892, wrongfully and in violation of the trust upon and under which said lands were deeded to and held by him borrow \$60,000 from said San Francisco Savings Union, and make, execute and deliver to said Thaddeus B. Kent and Henry C. Campbell a deed of trust purporting to convey said lands and real property as security for the payment of the \$60,000 so wrongfully and unlawfully borrowed by him; and that said \$60,000 so wrongfully and unlawfully borrowed by George Staacke was received by said Thomas Bell for his own use and benefit, except as John S. Bell

may have received the benefit or credit on his indebtedness to Thomas Bell.

Thirdly: That said George Staacke wrongfully and in violation of the trust upon and under which said lands were deeded to and held by him under said deed of March 7th, 1889, refuses to convey to the plaintiff or to his successors in interest that portion of the said lands described in said paragraph 11 in said amended and supplemental complaint.

Fourthly: That each and all of the sums of money advanced by said Thomas Bell to said John S. Bell from and after the 6th day of March, 1889, was and were made to John S. Bell individually and personally from motives of love and affection, and on the personal credit of said John S. Bell, and not under or upon or by reason of any claim or assertion of said Thomas Bell that the agreement of August 27th, 1889, between said Thomas Bell and John S. Bell set forth in paragraph VI of said amended and supplemental complaint remained or continued in force, or upon or under or by reason of any claim or assertion of any lien upon said land described in paragraph 11 of said amended and supplemental complaint or any part or portion thereof, or upon or under or by reason of any claim or assertion by said Thomas Bell or by said George Staacke that said deed of March 7th, 1889, was or had been made to said George Staacke as security for the payment of any money due to Thomas Bell or for any advances of money made by said Thomas Bell to said John S. Bell.

Fifthly: That the defendants George Staacke, and Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, and each of said defendants and the attorney and attorneys, agent and agents of each of said defendants and any and all persons acting for or claiming any right, title or interest of, in or to the following described lands be and are enjoined and restrained; and are hereby commanded to refrain and desist from asserting, maintaining or pretending to have any right, title, interest, lien, claim or demand in, to, upon or against all or any part or portion of the follow-

ing described lands and real property, to-wit: All that real property situate in the County of Santa Barbara, State of California, forming a part of the rancho known as "Rancho de Los Alamos," to-wit:

(Same description of 10062.2 acres tract of land as on pages 6, 7, 8 and 9.)

Sixthly: That a writ of injunction issue out of and under the seal of this Court perpetually enjoining, restraining and commanding the defendants, and each of the defendants, and their and each of their agents and attorneys and any and all persons claiming by, through or under them from asserting, maintaining or pretending that either or any of them have any right, title, interest, claim or demand to, upon or against the lands or any part or portion of the lands last hereinabove mentioned and described.

Seventhly: That the plaintiff recover his costs in this action taxed at \$153.35, and that the special administratrix of the estate of Thomas Bell, deceased, pay the same in due course of administration.

Eighthly: That the defendant, Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, have and recover judgment against the plaintiff, John S. Bell, personally for the sum of fifty-two thousand one hundred and twenty and 15-100 dollars (\$52,120.15) with interest thereon at the rate of seven per cent. per annum from the 16th day of October, 1892.

Done in open Court this 29th day of June, 1901.

W. S. Day,

Judge of the Superior Court."

(Endorsed): Filed June 29th, 1901.

C. A. Hunt, Clerk.

8th—Your orator further says, complains and alleges upon information and belief that on the 8th day of July, 1901, the said George Staacke individually and said Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, served and filed a notice of appeal to the Supreme Court of the State of California from all that portion of said decree of said Superior Court included within the paragraphs in said decree

designated as "First," "Secondly," "Thirdly," "Fourthly," "Fifthly," "Sixthly" and "Seventhly"; and from all that portion of said decree immediately preceding the said "First" paragraph, and following the words "as executors of the will of Thomas Bell, deceased," that is, that portion of said decree commencing with the recital "that on the 7th day of January, 1901, upon a motion duly made by and on behalf of Katherine M. Bell and James L. Crittenden," and preceding the paragraph therein designated as "Eighthly"; that thereafter such proceedings were duly had and taken on said appeal from said decree to the Supreme Court, so taken as aforesaid, that said appeal from said judgment and decree was dismissed for want of jurisdiction by the said Supreme Court of the State of California, and the said judgment and decree thereby became and was affirmed; that said judgment and decree ever since has been and remained and still is in full force; and that said judgment and decree was and is a final adjudication of the rights and interests of the parties to said action in which it was rendered and entered; that the said Superior Court and the Judge thereof, in said action in which said judgment and decree was rendered, rendered and filed Findings of Fact and Conclusions of Law therein on the 6th day of March, 1901, and thereafter rendered and filed additional Findings of Fact and Conclusions of Law on the 7th day of June, 1901, on material issues raised by the pleadings in said action; that no motion for a new trial in said action of John S. Bell v. George Staacke, et al., and no notice of intention to move for a new trial therein was made, given, served or filed on or after the 7th day of June, 1901, and the time to serve and file any notice of intention to move for a new trial therein expired on or about the 17th day of June, 1901; that the findings of fact and conclusions of law and the decision of said Superior Court in said action of John S. Bell v. George Staacke, et al., on the 9th day of July, 1901, became and ever since have been final, conclusive and binding upon all the parties to said action, and their successors in interest, and upon each and all of the

heirs of said Thomas Bell, deceased, and the jurisdiction and power of said Superior Court to hear or grant any motion for a new trial in said action was then terminated forever and ceased to exist, and the said Superior Court and any and all appellate courts of the State of California, and the Supreme Court of the State of California lost and ceased to have any jurisdiction whatsoever to entertain, hear, pass upon or review any notice of intention to move for a new trial or any motion for a new trial in said action or any order made on any such notice or motion, or to modify, alter or change in any way or manner or respect said judgment of said Superior Court; that it was declared and provided in and by the laws of the State of California and by the Act of the Legislature of the State of California entitled "An Act to establish a Code of Civil Procedure," approved March 11th, 1872, as amended in and by that certain Act of the Legislature of the State of California entitled "An Act to amend the Code of Civil Procedure," approved March 24th, 1874, and in and by section 659 of said Code of Civil Procedure as amended by said Act of March 24th, 1874, that "The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the Court, or referee, if the action were tried without a jury, file with the Clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the Court, or a bill of exceptions, or a statement of the case * * *"; that it was declared and provided in and by section 254 of said Act of March 24th, 1874, that said Act should take effect on the first day of July, 1874; that said section 659 of The Code of Civil Procedure of California, as amended by said Act of March 24th, 1874, was and continued to be in full force from the first day of July, 1874, until May 20th, 1907, when it was amended by an Act of said Legislature of the State of California entitled "An Act to amend sections six hundred and fifty-six, six hundred

and fifty-nine, six hundred and sixty, and to re-number and amend section six hundred and sixty-three and a half of the Code of Civil Procedure, all relating to new trials," approved on March 20th, 1907, by the Governor of the State of California; that said section 659 was amended by said Act approved March 20th, 1907, so as to read as follows, "The party intending to move for a new trial must, within ten days after receiving notice of the entry of the judgment, file with the clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits, or the minutes of the Court, or a bill of exceptions, or statement of the case * * *"; that said section 659 of said Code of Civil Procedure of California and the provisions thereof as amended by said Act of March 20th, 1907, has been in full force since May 20th, 1907, and is now in full force; that said action in which said judgment and decree dated the 29th day of June, 1901, was rendered and filed, was tried without a jury by said Superior Court; that each and all of the defendants and attorneys for the defendants in said action in which said judgment and decree of June 29th, 1901, was rendered and filed had notice and well knew on and before the ninth day of July, 1901, that said findings and said additional findings and conclusions of law and said judgment and decree had been rendered and filed at the time and as hereinabove in this paragraph and in this Bill alleged and shown; that, as your orator believes, said additional findings and conclusions of law were made, rendered and filed by said Superior Court and by the Judge of said Superior Court upon and at the special instance and request of the attorneys of and for the defendants in said action in which said decree and judgment dated June 29th, 1901, was rendered and filed; that it is provided and declared in and by section 955 of said Code of Civil Procedure that "The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal," and said sec-

tion 955 and the provisions thereof have been in full force and effect since said Act of March 11th, 1872, was enacted and went into effect, and is and now are in full force and effect; that the Supreme Court of California did not in or by its order judgment, and decree dismissing the appeal from said judgment and decree of said Superior Court dated and filed in said Superior Court on the 29th day of June, 1901, dismissed said appeal without prejudice to another appeal or to any other appeal and did not either expressly or otherwise provide or declare that the dismissal of said appeal was made expressly or otherwise without prejudice to another appeal or to any other appeal; that said appeal taken by the defendants from said judgment and decree dated June 29th, 1901, was dismissed by an order and judgment of the Supreme Court of the State of California duly made and rendered in bank on the 16th day of September, 1902, and that said order and judgment dismissing said appeal from said judgment has never been modified, vacated or set aside; that the said findings of fact and conclusions of law made, rendered and filed in and by said Superior Court as aforesaid on the 6th day of March, 1901, and on the 7th day of June, 1901, were and constituted the decision and the only decision of said Superior Court in said action entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," upon which said judgment and decree of said Superior Court was made and filed on the 29th day of June, 1901, as aforesaid; that said findings of fact and conclusions of law and additional findings of fact and conclusions of law are in the words and figures following, to-wit:

In the Superior Court of the County of Santa Barbara, State of California.

John S. Bell, Plaintiff, vs. George Staacke, et al., Defendants.

Findings.

The above entitled action came on for trial on the 22d day of June, 1900, in its regular order upon the calen-

dar, before the above entitled Court, sitting without a jury, Hon. W. S. Day presiding, and the trial was thereupon and thereafter proceeded with in the 22nd, 23rd, 25th, 26th, 27th, 28th, 29th and 30th days of June, and on the 2nd day of July, 1900, and submitted to the Court for decision, Richards & Carrier, Esqs., and James L. Crittenden, Esq., appearing as attorneys for plaintiff on said trial, and Canfield & Starbuck, Esqs., appearing as attorneys for defendant Staacke and for defendant Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, and T. Z. Blakeman, Esq., appearing as attorney for said special administratrix. Oral and documentary evidence was introduced on said trial by the respective parties; briefs thereafter were duly presented and submitted, and the Court having heard and considered all of the evidence and the briefs and arguments of counsel, now makes and files the following Findings of Fact and Conclusions of Law, to-wit:

Findings of Fact.

The Court finds the following facts, to-wit:

First—That each and all of the allegations and averments in paragraphs I, II, III, IV and VII of the amended and supplemental complaint of plaintiff filed June 9, 1897, is and are true, except in that George Staacke is not now executor of the will of Thomas Bell, deceased, but was by order of Court made on the 23d day of March, 1900, suspended as such, and on the 4th day of May, 1900, his letters testamentary were revoked, and on the 23d day of March, 1900, the defendant, Teresa Bell, was by order of Court substituted in his place as administratrix with the will annexed and has qualified and is now acting as such.

Second—That on or about the 19th day of October, 1874, the plaintiff entered upon said tracts and parcels of land described in paragraphs II and III of said complaint, and took and entered into possession of all of said land and of all the personal property on said land as the property of the plaintiff, and thereafter and until the 18th day of March, 1885, remained and was in the

quiet, peaceable and notorious possession of all the land in said complaint described, and from and after the 18th day of March, 1885, until the 23d day of August, 1887, was and remained and continued in the quiet, peaceable and notorious possession of the tract and parcel of land and real property hereinabove in paragraph II of said complaint mentioned and described.

Third. That on the 23d day of August, 1887, the plaintiff sold and conveyed to Dwight W. Grover the land and real property mentioned and described in paragraph II of said amended and supplemental complaint, and that on August 23d, 1887, Thomas Bell sold and conveyed to said Dwight W. Grover the land and real property mentioned and described in paragraph III of said amended and supplemental complaint, and that the consideration to be paid by said Grover to the plaintiff and said Thomas Bell for said tracts of land was three hundred and fifty thousand dollars (\$350,000); that said Grover paid seventy thousand dollars of said consideration in money, and for two hundred and eighty thousand dollars of said purchase price of said tracts of land, made, executed and delivered to said Thomas Bell eight promissory notes, dated August 23d, 1887, each and all payable to his order, four of them being for sixteen thousand dollars each, payable in one, two, three and four years, respectively, from the dates thereof, and four of them being for fifty-four thousand dollars, each payable in one, two, three and four years, respectively, from the dates thereof, and in order to secure the payment of said four notes of sixteen thousand dollars each, did, on said August 23, 1887, make, execute and deliver to said Thomas Bell a mortgage in favor of said Thomas Bell upon the tract of land containing four thousand acres, described in paragraph III of said amended and supplemental complaint, and in order to secure the payment of said four notes for fifty-four thousand dollars each, did, on August 23rd, 1887, make, execute and deliver to said Thomas Bell a mortgage in favor of said Thomas Bell upon the tract of land containing ten thousand and sixty-seven and two-

tenths acres of land described in paragraph II of said amended and supplemental complaint;

That \$216,000.00 out of said \$280,000.00 was the balance of the purchase price of said 10,067 2-10 acre tract, and was represented by said four notes of \$54,000 and by the mortgage on said 10,067 2-10 acres executed by said Grover to secure the payment of the same, and that said John S. Bell was the real owner of said four notes of \$54,000 each and of the mortgage executed by said Grover on said 10,067 2-10 acre tract to secure the same; that said four notes of \$54,000 each and said mortgage were made and executed to said Thomas Bell for the purpose of rendering the execution of releases and partial releases of the mortgage more convenient and easy and in that way to facilitate and expedite such sales of portions of said tract of land as should be made by said Grover, as well as in furtherance of the agreement to which reference is made in the next succeeding finding herein.

Fourth—That on the 27th day of August, 1887, the plaintiff and said Thomas Bell, for the purpose of perpetuating an oral agreement that had been made and entered into by them prior to said sale and conveyance to said Grover, made and entered into the agreement in writing set forth at length in paragraph VI of said amended and supplemental complaint and dated August 27th, 1887.

Fifth—That the interest was not paid by said Dwight W. Grover or Samuel Rosenor upon said eight promissory notes given for the balance of the purchase price of said land, and prior to the 23rd day of November, 1888, the said Dwight W. Grover and Samuel Rosenor agreed to convey back said tracts of land in the event of their not paying on the 23rd day of November, 1888, the interest due on said notes on that date; the said Dwight W. Grover and Samuel Rosenor failed to pay and did not pay on the 23rd day of November, 1888, the interest due on said promissory notes; that on the 3rd day of January, 1889, said Thomas Bell commenced an action in the Superior Court of the said County of Santa Bar-

bara, State of California, to foreclose said mortgages.

Sixth—That after having made default in the payment of said interest due November 23rd, 1888, and after the commencement of said suit, and prior to March 7th, 1889, and prior to the execution of said deed of Grover and Rosenor to George Staacke, said Dwight W. Grover and Samuel Rosenor and John S. Bell and Thomas Bell agreed that said Grover and Rosenor should deed and convey back to the former owners of said property, to-wit: to John S. Bell the 10,067.2 acre tract, except the parts thereof that had been sold and conveyed to other parties by said Grover and Rosenor, and to Thomas Bell said 4000 acre tract of land, except such parts thereof as had been sold and conveyed by said Grover and Rosenor to other persons, and that said eight promissory notes should be transferred, surrendered and delivered to said Grover and Rosenor, and that mortgages that had been executed by said Grover to secure the payment of said notes should be released.

Seventh—That prior to the said agreement between Grover and Rosenor and John S. Bell and Thomas Bell for the re-conveyance of said tracts, it was agreed and understood by and between Thomas Bell and John S. Bell that the lands should be re-conveyed to them according to their original titles, except in so far as there had been sales made from the tract formerly belonging to John S. Bell, and it was also by them understood that the conveyance was to be made through defendant Staacke.

Eighth—That thereafter and on the 7th day of March, 1889, under and in pursuance of said agreements to convey back said tracts of land set forth in findings Sixth and Seventh, said eight promissory notes were surrendered and delivered to said Samuel Rosenor for himself and said Grover, and at the same time the release of the mortgages given to secure the same was duly made and executed by said Thomas Bell and delivered to said Samuel Rosenor, and said suit to foreclose said mortgage was dismissed by him; and at the same time said Dwight W. Grover and Samuel Rosenor,

under and in pursuance of said agreements to convey back said tracts of land, made, signed and acknowledged a deed of conveyance in writing purporting to grant and convey to George Staacke, one of the defendants in this action, the said lands and tracts of land sold and conveyed as aforesaid by said John S. Bell and Thomas Bell, respectively, to said Dwight W. Grover, excepting and reserving from the tract of land described in said paragraph 11 of said complaint all the town lots sold and conveyed by deed by John S. Bell prior to the 7th day of April, 1887, the same being laid down and shown upon a certain map entitled "Map of the Town of Los Alamos," situated in the County of Santa Barbara, surveyed for J. B. Shaw and John S. Bell, September 15th, 1876, W. W. Bagster, Surveyor," and recorded in said Santa Barbara County Recorder's office at the request of J. B. Shaw on February 1st, 1897, in Book B of Miscellaneous Records, page 406, and thereon numbered as follows: Lots 4, 6, 7, 8, 11, 14 to 22, both inclusive, and 25, in block 4; lots 8, 9, 14, 15, 16, 19 and 20 in block 5; lots 5 and 6 in block 6; lots 1 to 13, both inclusive, and lot 16 and lots 18 to 26, inclusive, in block 8; all block 9, except lots 21 and 22; all of block 16, except lots 12, 13, 23, 24, 25 and 26; all of block 17, except lots 1, 2, 3, 4, 5, 6, 19, 20 and 21; lots 20, 21 and 22 in block 18; lots 1 to 9, both inclusive, in block 20; lots 6 to 19, both inclusive, in block 21.

Also excepting all the land conveyed or donated prior to June 7th, 1887, by said John S. Bell, for county roads, streets and railroads, and the rights of the purchasers of lots in said Town of Los Alamos to the use of the streets and highways therein; also the cemetery plot adjoining said town, conveyed by John S. Bell by deed of June 7th, 1885.

Also excepting therefrom the following described parcels of land sold and conveyed by said Dwight W. Grover and Samuel Rosenor since August 23d, 1887: Lot 26 in block 4; lot 5 in block 4; lots 1, 2, 3 and 4 in block 21; lots 23 and 24 in block 4; lot 21 in block 9; lots 2 and 13 in block 4; lots 3, 4, 6, 17, 18, 21 and 22 in block

5; lots 19, 20 and 21 in block 17 of the Town of Los Alamos; Tract No. 28, containing 4.25 acres; Tracts Nos. 51, 52 and 53 containing 15 acres and Tract No. 23 containing 4.31 acres of land, of Grover, Rosenor and Irwin's Subdivisions of the Los Alamos Rancho.

Ninth. That said deed of Grover and Rosenor after having been received by one James Wheeler, the attorney who had prepared the same pursuant to said agreement to convey back said land and by him on the 3d day of June, 1889, filed for record in the office of the County Recorder of Santa Barbara County, and recorded in Book 24 of Deeds, page 495, et seq., was by said James Wheeler on June 6th, 1889, delivered to said George Staacke, but said George Staacke paid no consideration for the same and never took possession of said real property or any part thereof or assumed any control over the same under or by virtue of said conveyance, or otherwise.

Tenth. That within a few days after the execution by Grover and Rosenor of the deed of Staacke, to-wit: On or about the 10th day of March, 1889, the plaintiff entered upon the lands described in paragraph II of said amended and supplemental complaint, and took possession of the same as owner and at the same time assumed the same relations towards Thomas Bell and the two several tracts herein involved as had existed prior to the sale by John S. Bell and Thomas Bell to Grover, except that F. C. Hathaway first and thereafter Louis Jones, acted as agent by consent of both Thomas Bell and John S. Bell and so continued from that time until the appointment of receiver by this Court, the said agent, and the said Thomas Bell and the said John S. Bell, each performed certain duties in relation to both tracts. The said John S. Bell and the said Louis Jones as agent collecting all rents and keeping separate accounts between the two tracts and the two original owners, and shipping the said rents and proceeds to Thomas Bell at San Francisco, he carrying the proceeds of the 4,000-acre tract to his individual account and the proceeds of the 10,000-acre tract to the account of John S. Bell.

That said John S. Bell's possession was open, notorious and adverse to all the world, accompanied by the payment of all taxes levied against the property, except that he voluntarily submitted to and joined in the appointment of an agent who leased lands and collected rents, accounting to both John S. Bell, to whom they belonged, and to Thomas Bell, by whom they were disposed of, the disposition being by acquiescence in between John S. Bell and Thomas Bell for many years.

Eleventh. That said George Staacke had notice and well knew and understood at and before the execution and delivery to him of said deed of March 7th, 1889, and before the recording thereof, that the plaintiff had sold and deeded to said Grover the said land and real property described in paragraph II of said amended and supplemental complaint, and that there was due and owing to plaintiff from said Grover more than \$216,000 on account of the purchase price agreed to be paid therefor by said Grover for said tract of land, and that plaintiff had a lien upon said 10,067 2-10 acre tract of land described in paragraph II of said amended and supplemental complaint for the payment of the balance of the purchase price thereof, amounting to more than \$216,000, and that said Grover and Rosener had made and executed said deed of March 7th, 1889, to him, said Staacke, in consideration of the surrender of said notes amounting to \$216,000 given by said Grover for the balance of the purchase price of 10,067 2-10 acres of land and of the release of said mortgage given and executed by said Grover to secure the payment of said notes, and that John S. Bell had taken possession of and was in the actual, peaceable possession of all that portion of said 10,067 2-10 acre tract of land conveyed to said George Staacke by said deed of March 7th, 1889, and was asserting title thereto and claiming to be the owner in fee thereof.

Twelfth. That it was not agreed by the plaintiff, Thomas Bell and George Staacke, or by either or any of them, at the time of the execution by said Grover and Rosener of said deed of March 7th, 1889, or at any

other time, that said George Staacke should hold said land described in said conveyance, or any part thereof, as security for the payment by the plaintiff to said 'Thomas Bell of all or any sums of money which had theretofore been advanced by said 'Thomas Bell to the plaintiff or which were then due or owing by said plaintiff to said 'Thomas Bell, or for all or any sum or sums of money which said 'Thomas Bell should thereafter see fit to loan or advance to the plaintiff, or for interest thereon, or that said George Staacke should have the right to collect and receive the or any rents, issues or profits of said 10,067 2-10 acre piece of land or to apply the same to any indebtedness due by plaintiff to said 'Thomas Bell, or to any interest on such indebtedness, or to the payment of all or any taxes or assessments which should be levied upon said 10,067 2-10 acre piece of land, or that said George Staacke, as trustee under said or any deed or otherwise, should go into possession of said 10,067 2-10 acre piece of land, or any part thereof, or manage or control the same, or any part thereof.

Thirteenth. That George Staacke did not immediately upon the execution of said deed of March 7, 1889, by Grover and Rosener, or at any other time, go or enter into the possession of said 10,067 2-10 acre piece or tract of land, or of any part or portion thereof, and that the said George Staacke has never been in possession as trustee under said deed of March 7, 1889, or by his agents or in any manner whatsoever, of said 10,067 2-10 acre tract or of any part or portion thereof, and that the defendant Louis Jones is not now and never has been in the possession of said 10,067 2-10 acre piece of land or of any part or portion thereof as agent for said George Staacke as trustee or otherwise, and has not, as agent for said George Staacke as trustee or otherwise, collected or received any rents or issues or profits of said 10,067.2 acre piece of land, or of any part or portion thereof, and that the only rents, issues or profits of said land collected or received by the defendant Louis Jones prior to his appointment as receiver in this action were collected and received by

him for the plaintiff and as agent and superintendent under and for plaintiff and Thomas Bell as herein in Finding Tenth indicated.

Fourteenth. That the said Staacke did not become by reason of the execution and delivery of said deed of March 7, 1889, and has not been since the execution of said deed, and is not now vested with the legal title to all or any part or portion of the land described in paragraph II of the amended and supplemental complaint, and in said amended cross-complaint in trust for said Thomas Bell or to secure the payment of any sum or sums of money that were advanced by Thomas Bell to John S. Bell.

Fifteenth. That said George Staacke has no beneficial or other interest in said land or real property or in or to any part or portion thereof, or in or to any of the rents, issues or profits thereof, and holds the naked legal title to all of the lands and real property so conveyed by Grover and Rosener to him, said Staacke, in trust for the purpose of conveying and to convey and deed to the plaintiff all that portion of the tract of land described in paragraph II so conveyed by said deed of March 7, 1889, to said Staacke, and to convey to said Thomas Bell or his heirs all that portion of the tract of land described in paragraph III of said amended and supplemental complaint.

Sixteenth. That on the 3d day of February, 1892, Thomas Bell and George Staacke borrowed from the San Francisco Savings Union, a corporation, \$60,000 for the use of Thomas Bell, the said Staacke giving his note therefor, endorsed and guaranteed by said Thomas Bell, and the said George Staacke at the same time, to secure the payment thereof executed and delivered to said San Francisco Savings Union a trust deed upon all the real property conveyed to him by Grover and Rose-ner by deed of March 7, 1889. The proceeds of the loan, sixty thousand dollars, were by Thomas Bell credited to John S. Bell.

Seventeenth. That after the death of Thomas Bell and the admission of said Thomas Bell's will to pro-

bate and the due appointment and qualification of George Staacke and John W. C. Maxwell, as executors of said Thomas Bell's estate, the San Francisco Savings Union presented to said executors a claim against the estate of said Thomas Bell, deceased, upon said note of \$60,000, which claim was duly approved and allowed by said George Staacke and John W. C. Maxwell, as executors of the last will of Thomas Bell, deceased, and by the Superior Court of the State of California, in and for the City and County of San Francisco, having jurisdiction of said estate, and that said claim so approved and allowed was thereafter duly filed in the matter of the estate of said Thomas Bell, deceased, in the Superior Court having jurisdiction of said estate and that said claim is still held by said San Francisco Savings Union against the estate of Thomas Bell, deceased, and against said George Staacke, and John W. C. Maxwell, executors of the estate of Thomas Bell, deceased, as a valid claim upon and against said estate, and that the same is a valid claim against said estate of said Thomas Bell, deceased.

Eighteenth. That no authority was given to or vested in said George Staacke by or under the agreements hereinabove found to have been made and entered into by said Dwight W. Grover, Samuel Rosener, John S. Bell and Thomas Bell, or by or under the terms of the trust upon which said lands were so as aforesaid conveyed to George Staacke by said deed of March 7, 1889, to borrow any money upon said lands or any part or portion thereof, or to mortgage said lands or any part or portion thereof or to deed or convey in trust or otherwise said lands or any part or portion thereof as security for the payment of any moneys borrowed by said George Staacke or by Thomas Bell and that said George Staacke had no power or authority as such trustee to borrow said \$60,000 from the San Francisco Savings Union, or any part or portion thereof, or to make or execute the said deed of conveyance to Thaddeus B. Kent and Henry C. Campbell, or to convey the said lands or any part or portion thereof in trust for the

payment of said loan of \$60,000 or for the payment of any part thereof, and that the borrowing of said \$60,000 and the making, execution and delivery of said deed to said Henry C. Campbell and Thaddeus B. Kent was wrongful and in violation of the trust upon and under which said lands were held by said Staacke; that all of the \$60,000 borrowed by said Staacke from said San Francisco Savings Union, as aforesaid, was received by said Thomas Bell for his individual use and benefit, except as John S. Bell may have received the benefit of credit on his indebtedness to Thomas Bell.

Nineteenth. That said George Staacke wrongfully and in violation of said trust refuses to convey to the plaintiff that portion of said 10,067 2-10 acre tract conveyed to him, said Staacke in and by said deed of March 7, 1889.

Twentieth. That each and all of the sums of money advanced by said Thomas Bell to John S. Bell from and after the 6th day of March, 1889, was and were made to John S. Bell individually and personally from motives of love and affection and in the same manner as such advances had been made prior to the sale of the land to Grover on the personal credit of said John S. Bell, and not under, upon or by reason of any claim or assertion on the part of said Thomas Bell and that said agreement of August 27th, 1889, between said Thomas Bell and John S. Bell remained or continued in force, or upon, under or by reason of any claim or assertion of any lien upon said 10,067 2-10 acre tract, or upon or under or by reason of any claim or assertion by said Thomas Bell or by said George Staacke that said deed of March 7th, 1889, was or had been made to said George Staacke as security for the payment of any money due to Thomas Bell or for any advances of money made by said Thomas Bell to John S. Bell.

Twenty-first. That said Thomas Bell subsequent to the 27th day of August, 1887, made advances of money to said John S. Bell which, after deducting moneys paid by John S. Bell to Thomas Bell aggregated, with interest on March 7th, 1889, \$69,259.64; that between March

7, 1889, and February 2, 1892, Thomas Bell made advances of money to John S. Bell aggregating \$32,947.68 and received between March 7, 1889, and February, 1892, divers sums of money from and on account of John S. Bell, aggregating \$16,054; that said Thomas Bell made advances to John S. Bell between February 2nd, 1892, and October 16th, 1892, aggregating \$6743.01; that Thomas Bell received between February 2, 1892, and October 16, 1892, divers sums of money from and on account of John S. Bell, aggregating \$1933.76.

Twenty-second. That John S. Bell was indebted to Thomas Bell on the 16th day of October, 1892, the day when Thomas Bell died, on account of advances of money and interest thereon in the sum of \$52,120.15, but that said indebtedness, and the claim of Thomas Bell for said indebtedness was not nor was any part of it a lien upon the land or any of the land conveyed by said deed and conveyance made on March 7th, 1889.

Twenty-third. That the cause of action to recover the \$52,120.15 found in the last finding to have been due to Thomas Bell from John S. Bell on October 16, 1892, is not barred by the provisions of Sections 312, 335 and 343 of the Code of Civil Procedure of the State of California, or by any provisions of any of said sections.

Conclusions of Law.

1. That the plaintiff is entitled to a good and sufficient deed of conveyance from said George Staacke of all that part or portion of said 10,067 2-10 acres of land conveyed by Dwight W. Grover and Samuel Rosener to said George Staacke by said deed of March 7, 1889, and to a decree that said George Staacke make, execute and deliver to the plaintiff a good and sufficient deed and conveyance of all that part or portion of said 10,067 2-10 acres of land conveyed by Dwight W. Grover and Samuel Rosener to said George Staacke by said deed of March 7, 1889.

2. That the plaintiff is entitled to an injunction enjoining and restraining said George Staacke and said

Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, and any and all persons claiming by or through or under them or either of them, from asserting or claiming any right, title or interest to any or to all of that part or portion of said 10,067 2-10 acres of land conveyed by Dwight W. Grover and Samuel Rosener to said George Staacke by said deed of March 7, 1889, being the land described in the cross-complaint of the defendants and in paragraph II of said amended and supplemental complaint.

3. That the plaintiff is entitled to his costs in this action incurred and to a judgment therefor.

4. That said defendant Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, is entitled to judgment herein against said plaintiff John S. Bell for the sum of fifty-two thousand one hundred and twenty and 15-100 dollars, with interest thereon from the 16th day of October, 1892.

Dated: Santa Barbara, California, March 6, 1901.

W. S. Day,

Judge of the Superior Court.

(Endorsed: "Filed March 6th, 1901. C. A. Hunt, Clerk.")

In the Superior Court of the County of Santa Barbara,
State of California.

John S. Bell, Plaintiff, vs. George Staacke, et al., Defendants.

Additional Findings.

It appearing to the Court that in the findings of fact in the above entitled action, heretofore made and filed on March 6th, 1901, there is an omission to dispose of the issue of fact raised by the plaintiff's amendment to his answer to the defendants' amended cross-complaint, which amendment to plaintiff's said answer was filed June 17th, 1897, and it appearing further to the Court that said omission was through inadvertence;

Now therefore, in as much as the judgment has not yet been made or entered on said findings, the Court of its own motion, to supply said omission in said findings and upon the evidence submitted at the trial of said

action, makes the following additional findings of fact and conclusions of law, to-wit:

The Court finds:

1. That the indebtedness of plaintiff to Thomas Bell prior to his decease as alleged by defendants, contains no illegal charges.

2. That no indebtedness current or otherwise exists or existed in the sum of seventy-five thousand dollars or in any sum, of Thomas Bell to plaintiff for continuous or any services rendered by plaintiff to said Thomas Bell at any time or on any account.

Conclusions of Law.

The Court concludes from the foregoing that the plaintiff is not entitled to any set-offs or counter-charges against the account of said Thomas Bell with the plaintiff other than for the moneys received by said Thomas Bell and credited in said account, as in finding "Twenty-first" in the findings hereinbefore filed on March 6th, 1901, specified, and is not entitled to have the said account of Thomas Bell with plaintiff surcharged and falsified in any respect.

Dated this 7th day of June, 1901.

W. S. Day, Judge.

(Endorsed): Filed June 7th, 1901. C. A. Hunt, Clerk.

9th. Your orator further complaining, says, avers and alleges on information and belief that said Thomas Frederick Bell, Mary T. Holman, Robina Vellguth, Eustace Reginald Bell, Muriel Bell, and Teresa Bell were and are the only heirs at law of Thomas Bell, deceased; that said George Staacke acting under and in accordance with said judgment and decree and the order therein made and contained, made, signed, acknowledged and executed to James L. Crittenden and Catherine M. Bell and delivered on the 8th day of July, 1901, to C. A. Hunt, as County Clerk of said County of Santa Barbara, and as Clerk of said Superior Court, a good and sufficient deed and conveyance in due form of law, wherein and whereby he, the said George Staacke, granted, conveyed and transferred to the said James L.

Crittenden in fee simple an undivided one-half of all of said tract, piece and parcel of land containing 10,067.2 acres, and to said Catherine M. Bell in fee simple an undivided one-half of, in and to said tract, piece or parcel of land of 10,067.2 acres describing in said deed and conveyance said tract, piece and parcel of land of 10,067.2 acres and that the transfer, grant and conveyance by said George Staacke so made by and contained in said deed of conveyance so as aforesaid delivered to C. A. Hunt as County Clerk and Clerk of said Superior Court, was delivered to said C. A. Hunt as such Clerk for and for the benefit of James L. Crittenden and Catherine M. Bell and became and was an absolute grant, deed, transfer and conveyance of the title and fee of, in and to said tract, piece and parcel of land of 10,067.2 acres, to said James L. Crittenden and Catherine M. Bell and vested in each of them an undivided one-half of said lands and of each and every part and portion thereof; and that the said grant, transfer and conveyance became final on or about the 29th day of December, 1901;

That the said U. S. Oil & Land Company was duly created, and organized under and by virtue of the laws of the Territory of Arizona and having its principal place of business outside of said Territory of Arizona and in said City and County of San Francisco, and was such corporation on the 18th day of September, 1902, and for a long time prior thereto, and has ever since been a corporation, and is now a corporation existing by and under the Constitution and Laws of the State of Arizona; that on or about the 14th day of February, 1912, said Territory of Arizona became and was admitted as a State and one of the United States of America and ever since has been and now is a State;

That on or about the 5th day of April, 1905, said George Staacke died testate in the City and County of San Francisco, State of California, a resident of said City and County, leaving property therein; that thereafter the last will and testament of said George Staacke was filed for probate in the Superior Court of the City

and County of San Francisco, State of California; that thereafter in the month of April, 1907, a petition in writing was filed by George Henry Howard for the probate of the last will and testament of said George Staacke, deceased, in the said Superior Court of the City and County of San Francisco, and on the 19th day of April, 1907, an order and decree was duly given and made in said last mentioned Superior Court admitting the last will and testament of said George Staacke to probate, and appointing said George Henry Howard executor of the estate and of the last will and testament of said George Staacke, deceased; that on the said 19th day of April, 1907, letters testamentary of and upon the estate and of the last will and testament of said George Staacke, deceased, were duly issued out of and by said Superior Court of the City and County of San Francisco to said George Henry Howard, and a duplicate filed in the office of the Clerk of said Court, and that said George Henry Howard thereupon duly qualified and entered upon the discharge of his duties as such executor and has ever since been and now is the executor of the estate and of the last will and testament of said George Staacke, deceased;

That on the 18th day of September, 1902, said James L. Crittenden and Nina D. Crittenden, his wife, for a valuable consideration sold, granted, transferred and conveyed in fee simple to the U. S. Oil & Land Company, plaintiffs herein, by a good and sufficient deed, dated September 18, 1902, signed and acknowledged by them, an undivided one-half of, in and to the said tract, piece and parcel of land of 10,067.2 acres; and that said deed was thereafter and on the 26th day of September, 1902, duly recorded in the office of the County Recorder of said County of Santa Barbara in Book 84 of Deeds, at page 253 et sequiter;

That on the 5th day of July, 1910, said U. S. Oil & Land Company for a valuable consideration sold, granted, transferred and conveyed in fee simple an undivided one-half of said 10,067.2 acres and tract of land to the San Luis Land and Improvement Company, a corpora-

tion, by good and sufficient deed dated the 5th day of July, 1910, duly signed and acknowledged by it and its President and Secretary, and that said deed was thereafter and on the 5th day of July, 1910, duly recorded in the office of the County Recorder of said County of Santa Barbara in Book 128 of Deeds, at page 101 et sequiter.

10th. Your orator further complaining, says, avers and alleges on information and belief that on the 23rd day of August, 1898, an action was commenced in the Superior Court of the State of California, in and for the County of Santa Barbara, by the filing of a complaint, and that said action was entitled "Kate M. Bell, James L. Crittenden and Sydney M. Van Wyck, Jr., Plaintiffs, v. San Francisco Savings Union, Thaddeus B. Kent, George Staacke, Henry C. Campbell, Edward B. Pond, Teresa Bell, Thomas Frederick Bell, Maria Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Ustace Bell, Teresa Bell as Guardian of the persons and estates of said Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, and John W. C. Maxwell and George Staacke as executors of the estate and of the last will and testament of Thomas Bell, deceased, John Doe, Richard Roe, Jane Doe and Mary Doe, defendants"; that said action was numbered in said Superior Court of Santa Barbara County as No. 4424, and that thereafter by an order duly made and filed on the 6th day of October, 1903, and by summons issued on defendants' cross-complaint said U. S. Oil & Land Company was brought in as a defendant to the cross-complaint in said action; that on the 17th day of December, 1902, an order in said action No. 4424 was duly made and filed in said Superior Court wherein and whereby said Mercantile Trust Company of San Francisco was made a party defendant and it and said San Francisco Savings Union, Henry C. Campbell and Edward B. Pond were given permission to serve and file a supplemental complaint and also a cross-complaint; that on or about the 12th day of October, 1903, a cross-complaint on the part of and by said San Francisco Savings

Union, Henry C. Campbell, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco against said Kate M. Bell, James L. Crittenden, Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, and the said U. S. Oil & Land Company, as defendants to said cross-complaint, was made and filed in said action; that answers to said amended cross-complaint were duly made, served and filed by each and all of said defendants to said cross-complaint in said action No. 4424; that answers to the complaint as amended in said action No. 4424 were duly made, served and filed by said San Francisco Savings Union, Edward B. Pond, Henry C. Campbell, Mercantile Trust Company of San Francisco, George Staacke and Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased; that thereafter a trial of the issues raised in and by the pleadings in said action No. 4424 and a decision consisting of Findings of Fact and Conclusions of Law was made, rendered and filed in said Superior Court by the Judge thereof on the 14th day of March, 1905, and on the same day a judgment and decree was duly made and filed in said action No. 4424 in said Superior Court by the Judge thereof; that said decision consisting of Findings of Fact and Conclusions of Law in said action No. 4424 found and filed as aforesaid is in the words and figures following, to-wit:

In the Superior Court of the County of Santa Barbara,
State of California.

Kate M. Bell and James L. Crittenden,

Plaintiffs,

vs.

San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke, Teresa Bell, Thomas Frederick Bell, Marie Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, Teresa Bell, as Guardian of the Persons and Estates of said Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, John Doe, Richard

Roe, Jane Doe, Mary Roe and Mercantile Trust Company of San Francisco,

Defendants.

U. S. Oil & Land Company,

Defendant to cross-complaint.
Decision.

The complaint in the above-entitled action having been duly filed in the office of the Clerk of this Court on the 23rd day of August, 1898, and a summons herein having been thereupon duly issued on said day and said summons together with copies of said complaint having been duly served upon the above-named defendants Teresa Bell and Teresa Bell as Guardian of the Persons and Estates of Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, on the 17th day of February, 1899, and upon the above-named defendants Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell on the 25th day of February, 1899, and upon the above-named defendants Thomas Frederick Bell and Marie Teresa Bell on the sixth day of March, 1899, and no further proceedings having been taken or had herein against said defendants or any of them and none of said defendants having appeared herein and no summons nor any copy of said or any complaint herein having been served on the above-named defendants John Doe, Richard Roe, Jane Doe and Mary Roe or any of them and none of said defendants John Doe, Richard Roe, Jane Doe and Mary Roe having appeared herein and the issues arising upon said complaint and the answers thereto of the above-named defendants San Francisco Savings Union and Edward B. Pond and of Henry C. Campbell, originally a defendant hereto, but now deceased, filed herein on the third day of October, 1898, and by order duly entered herein on the 17th day of September, 1902, ordered to stand as also the answer herein of the above-named defendant Mercantile Trust Company of San Francisco and the answer thereto of the above-named defendant George Staacke and George Staacke as executor of the estate and of the last will and testament of Thomas Bell, deceased, originally a defendant here-

to, but now removed, filed herein on the third day of January, 1899, and the amendments of said complaint filed herein on the 27th day of September, 1899, and the amendment and supplement filed by the above-named defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, on the 29th day of March, 1902, of and to said answer of said defendant George Staacke and of said George Staacke as executor as aforesaid and the amended supplemental answer of said defendants San Francisco Savings Union, Edward B. Pond and Mercantile Trust Company of San Francisco and of said Henry C. Campbell and the amended cross-complaint of said defendant San Francisco Savings Union, Edward B. Pond, George Staacke and Mercantile Trust Company of San Francisco and of said Henry C. Campbell and of the above-named defendant Thaddeus B. Kent, both filed herein on the 12th day of October, 1903, and the answer of said defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco and of said Henry C. Campbell filed herein on the second day of November, 1903, to said amendment and supplement of and to said answer of said defendant George Staacke and of said George Staacke as executor as aforesaid and the answer of said defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed filed herein on the 29th day of February, 1904, to said amended cross-complaint and the answer of the above-named plaintiffs Kate M. Bell and James L. Crittenden and of the above-named defendant to cross-complaint U. S. Oil & Land Company filed herein on the 4th day of March, 1904, to said amended cross-complaint and the amendment and supplement filed on the 13th day of June, 1904, of and to said answer of said defendant George Staacke and of said George Staacke as executor as aforesaid and of and to said amendment and supplement thereof and thereto so filed herein on the 29th day of March, 1902, as aforesaid having been duly brought by said defendants San Francisco Savings Union, Ed-

ward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco and by said Henry C. Campbell to trial by the Court on the 13th day of June, 1904, and having been tried by the Court on said days and on the 14th, 15th and 16th days of said month and on the 20th, 21st, 22nd and 23d days of September, 1904, James L. Crittenden, Esq., appearing as counsel for said plaintiffs and for said defendant to cross-complaint U. S. Oil & Land Company, Henry P. Starbuck, Esq., appearing as counsel for said defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco and for said Henry C. Campbell and Theodore Z. Blakeman, Esq., appearing as counsel for said defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, and the giving of evidence having been completed on said 23rd day of September, 1904, and the arguments of counsel having been heard and the cause having been on the 31st day of October, 1904, finally submitted for decision and due deliberation having been had thereon and the said Henry C. Campbell having died on the third day of January, 1905, and the Court by order duly entered herein on the 20th day of February, 1905, having allowed this action to be continued against and by said defendant Mercantile Trust Company of San Francisco as successor in interest to said Henry C. Campbell as well as in its own interest as a defendant hereto, the Court now gives its decision in writing and as required by Section 633 of the Code of Civil Procedure separately states the facts found and the conclusions of law as follows:

Facts Found.

1. That said defendant San Francisco Savings Union is and during all the time and times hereinafter mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City of San Francisco in said State.
2. That said defendant Mercantile Trust Company

of San Francisco was on the first day of November, 1900, and for a long time prior thereto and has been ever since a corporation created, organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City of San Francisco in said State.

3. That said defendant to cross-complaint U. S. Oil & Land Company was on the 18th day of September, 1902, and for a long time prior thereto and has been ever since a corporation created, organized and existing under and by virtue of the laws of the Territory of Arizona and having its principal place of business outside of said territory in said City of San Francisco.

4. That on and prior to the 19th day of October, 1874, Thomas Bell was the owner and in possession of both and each of two several tracts of land, situated and bounded and described as follows:

First. All that portion of that tract of land situate in the third township of the County of Santa Barbara in the State of California, known as the "Rancho de Los Alamos," which said portion of said rancho is bounded and described as follows, to-wit:

(Same description of 10062.2 acres tract of land as on pages 6, 7, 8 and 9.)

Second. All that certain other portion of the said "Rancho de Los Alamos" bounded and described as follows, to-wit: Commencing at the southeast corner of the tract of land surveyed and conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada by a deed of conveyance bearing date the sixteenth (16th) day of August, A. D. one thousand eight hundred and sixty-seven (1867), and thence running due east unto the westerly line of the tract of land hereinbefore described; thence running along the said westerly line to its intersection with the northern boundary line of said "Rancho de Los Alamos"; thence running along the said northern boundary line to its intersection with the northeast corner of the said tract of land conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada, to the place of beginning, containing about four thousand (4000) acres of

land.

5. That John S. Bell was a nephew of said Thomas Bell and on and for many years prior to said 19th day of October, 1874, and thereafter until the death of said Thomas Bell as hereinafter found relations of great love and affection existed between said Thomas Bell and said John S. Bell, by reason whereof said Thomas Bell had brought up, educated and supported said John S. Bell from childhood and was still supporting said John S. Bell and his family at said date.

6. That to enable said John S. Bell to support himself and his family, said Thomas Bell by grant bearing date on said 19th day of October, 1874, and recorded in the office of the Recorder of said County of Santa Barbara on the 27th day of October, 1874, in Book N of Deeds at page 162 conveyed both and each of said two several tracts of land to said John S. Bell as a gift in consideration of the relationship of blood between said Thomas Bell and said John S. Bell and the love and affection which said Thomas Bell had and entertained for said John S. Bell and without any other or valuable consideration him thereunto moving.

7. That said John S. Bell thereupon and under and by virtue of said grant took possession of said two several tracts of land and of both and each of them and entered upon the management thereof, but was unsuccessful in managing the same and unable to support himself and his family therefrom and said Thomas Bell thereupon and from time to time thereafter advanced to said John S. Bell for the support of himself and his family and for other purposes divers sums of money in evidence whereof said John S. Bell on the second day of February, 1884, executed and delivered to said Thomas Bell his promissory note for the sum of thirty thousand dollars payable two years after date, with interest thereon at the rate of seven and one-half per cent. per annum and as security for the payment of the same made, executed and delivered to said Thomas Bell a mortgage of the first above described of said two several tracts of land except that portion thereof included

within the bounds of the Town of Los Alamos bearing date on said day and recorded in said Recorder's office in Book N of Mortgages at page 48 on the 16th day of February, 1884.

8. That thereafter said John S. Bell continued to be unsuccessful in the management of said two several tracts of land and to be unable to support himself and his family therefrom and said Thomas Bell continued to advance to said John S. Bell further large sums of money in payment of a part, to-wit: Fifty thousand dollars, whereof said John S. Bell re-conveyed to said Thomas Bell the second above-described of said two several tracts of land by grant bearing date on the 18th day of March, 1885, and recorded in said Recorder's office in Book 5 of Deeds at page 415, but left unpaid at the date of said grant a part of said sums of money which thereafter on the third day of April, 1885, amounted with interest to the sum of five thousand five hundred and two 06-100 dollars.

9. That thereafter said John S. Bell borrowed the further sum of ten thousand dollars from Mary Barron, Roberta Barron, Robert Barron, Joseph Barron, William E. Barron and Eustace Barron, for which he executed and delivered to them on the 25th day of March, 1885, his promissory note for said sum, payable one year after date, with interest at seven and one-half per cent. per annum, and to secure the payment of the same made, executed and delivered to them a mortgage of said first above-described of said two several tracts of land, except said portion thereof included within the bounds of the Town of Los Alamos, bearing date on said day and recorded in said Recorder's office in Book N of Mortgages at page 429 on the 27th day of March, 1885.

10. That thereafter by assignment bearing date on the fifth day of June, 1885, and recorded in said Recorder's office in Book 73 of Assignments at page 47 on the 12th day of June, 1885, said Thomas Bell assigned to said Mary Barron, Roberta Barron, Robert Barron, Joseph Barron, William E. Barron and Eustace Barron said mortgage so made, executed and delivered to said

Thomas Bell by said John S. Bell and recorded in said Recorder's office in Book N of Mortgages at page 48 as aforesaid.

11. That thereafter said John S. Bell borrowed the further sum of not less than twenty thousand dollars from Daniel Harris and to secure the payment thereof conveyed to said Daniel Harris by grant intended as a mortgage bearing date of the 13th day of September, 1885, and recorded in the office of said Recorder in Book 6 of Deeds at page 386 on the 10th day of October, 1885, the first above-described of said two several tracts of land except such town lots in said town of Los Alamos as said John S. Bell had previously conveyed to other persons.

12. That thereafter by agreement in writing bearing date on the 11th day of April, 1887, and recorded in the office of said Recorder in Book 13 of Deeds at page 340 on the 19th day of April, 1887, said Thomas Bell and John S. Bell agreed with Dwight W. Grover to sell to said Dwight W. Grover for the sum of three hundred and fifty thousand dollars, both and each of said two several tracts of land except county roads, railroads and town lots theretofore conveyed in said Town of Los Alamos.

13. That thereafter and in order that said agreement to sell said two several tracts of land to said Dwight W. Grover might be performed on the part of said John S. Bell, said Thomas Bell satisfied both of said mortgages so respectively made, executed and delivered and assigned to said Mary Barron, Roberta Barron, Robert Barron, Joseph Barron, William E. Barron and Eustace Barron as aforesaid and further repaid to said Daniel Harris the sum so borrowed from said Daniel Harris by said John S. Bell as aforesaid and thereupon by grant bearing date on the fourth day of June, 1887, and recorded in the office of said Recorder in Book 15 of Deeds at page 609 on the 27th day of August, 1887, said Daniel Harris re-conveyed to said John S. Bell said first above-described of said two several tracts of land, except said town lots so conveyed by said John S.

Bell to other persons as aforesaid, and by two satisfactions, both bearing date on the fifth day of August, 1887, and recorded in the office of said Recorder on the 27th of August, 1887, in Book C of Satisfaction of Mortgages at page 303 and 304, respectively, said Mary Barron, Roberta Barron, Robert Barron, Joseph Barron, William E. Barron and Eustace Barron satisfied both and each of said mortgages so respectively made, executed and delivered and assigned to them as aforesaid.

14. That thereafter by grant bearing date on the 23rd day of August, 1887, and recorded in the office of said Recorder in Book 15 of Deeds at page 613 on the 27th day of August, 1887, said Thomas Bell and John S. Bell pursuant to said agreement and in performance thereof on their part conveyed to said Dwight W. Grover for the recited consideration of three hundred and fifty thousand dollars both and each of said two several tracts of land, except county roads, streets, railroads, cemetery and town lots sold and conveyed by said John S. Bell prior to the seventh day of April, 1887, but through inadvertence said grant was so worded as to suggest a doubt whether the second above-described of said two several tracts of land was effectually conveyed thereby.

15. Pursuant to said agreement and in performance thereof on his part, said Dwight W. Grover paid to said Thomas Bell in cash the sum of seventy thousand dollars, being a part of said above-mentioned sum or purchase price of three hundred and fifty thousand dollars and paid the balance thereof by eight promissory notes in writing, all bearing date on the 23rd day of August, 1887, by four whereof said Dwight W. Grover promised to pay to said Thomas Bell four sums of fifty-four thousand dollars apiece in one, two, three and four years from said date, respectively, with interest payable quarterly from said date of said notes, and by four whereof said Dwight W. Grover promised to pay to said Thomas Bell four other sums of sixteen thousand dollars apiece, also in one, two, three and four years from said date,

respectively, with interest payable quarterly from said date of said notes, but all of said sums were by the terms of said promissory notes to become due upon default of one month in the payment of any installment of interest on the same respectively.

16. That to secure the payment of said four promissory notes for fifty-four thousand dollars apiece said Dwight W. Grover made, executed and delivered to said Thomas Bell a mortgage of said first-above described of said two several tracts of land, except county roads, streets, railroads, cemetery and town lots sold and conveyed by said John S. Bell prior to the seventh day of April, 1887, bearing date on the 23rd day of August, 1887, and recorded in said Recorder's office in Book B of Mortgages at page 612 on the 27th day of August, 1887, and to secure the payment of said four promissory notes for sixteen thousand dollars apiece said Dwight W. Grover made, executed and delivered to said Thomas Bell a mortgage of said second above-described of said two several tracts of land bearing date on the 23d day of August, 1887, and recorded in the office of said Recorder in Book S of Mortgages at page 116.

17. That thereafter by agreement bearing date on the 24th day of August, 1887, and recorded in the office of said Recorder in Book C of Satisfactions of Mortgages at page 301 on the 27th day of August, 1887, said Dwight W. Grover promised and agreed in case of the sale by him of any portions of said two several tracts of land and in consideration of the release of such portions by said Thomas Bell from the lien of said mortgages to pay to said Thomas Bell on account of the indebtedness so secured by said mortgages respectively four-fifths of any cash received from the sale of any land covered thereby and to assign to said Thomas Bell any mortgages taken to secure deferred payments for said land.

18. That thereafter by grant bearing date on the 25th day of August, 1887, and recorded in the office of said Recorder in Book 15 of Deeds at page 617 on the 27th day of August, 1887, said Dwight W. Grover

conveyed to Samuel Rosener an undivided three-fifths of both and each of said two several tracts of land, except said county roads, streets, railroads, cemetery and town lots, and by grant bearing date on the 25th day of August, 1887, and recorded in said Recorder's Office in Book 15 of Deeds at page 622 on the 27th day of August, 1887, said Samuel Rosener conveyed to Joseph N. H. Irwin an undivided two-fifths of both and each of said two several tracts of land, except as aforesaid.

19. That in the meantime and since said third day of April, 1885, said Thomas Bell had continued to make further advances of money to said John S. Bell, which on the 24th day of August, 1887, amounted, with advances previously made and interest, to the sum of nine thousand four hundred and twenty-three 25-100 dollars and thereafter on the 27th day of August, 1887, said Thomas Bell and John S. Bell made and executed an agreement between themselves in words and figures as follows, to-wit:

"Agreement made this twenty-seventh day of August, A. D. 1887, between Thomas Bell and John S. Bell, both of the City and County of San Francisco, State of California.

Whereas, the said parties sold and conveyed on August twenty-third, 1887, to Dwight W. Grover fourteen thousand acres of land for the sum of three hundred and fifty thousand dollars, that is, at twenty-five dollars per acre, for one-fifth cash and four-fifths mortgages. Of said land, Thomas Bell owned four thousand acres and John S. Bell ten thousand acres. By an understanding between them John S. Bell was to get two hundred and seventy thousand dollars, being twenty-seven dollars per acre, and Thomas Bell eighty thousand dollars, being twenty dollars per acre. The cash payment was received by Thomas Bell, except the sum of six hundred dollars paid to John S. Bell and the mortgages, namely, two hundred and sixteen thousand dollars on the land of John S. Bell, and sixty-four thousand on that of Thomas Bell, were made to Thomas Bell.

And whereas, the said Thomas Bell has heretofore

from time to time made loans and advances to the said John S. Bell and at his request and he may hereafter make further loans and advances to said John S. Bell and the said Thomas Bell has credited John S. Bell's proportion of the cash payment to him against moneys owing by him and an accounting having been this day had between the said Thomas Bell and John S. Bell of and concerning all claims and demands between them and a statement thereof which is hereto annexed, having been made, examined and found correct and it is settled that the said John S. Bell is now indebted to the said Thomas Bell in the sum of twenty-five thousand five hundred and twenty-nine 5-100 dollars in United States gold coin, which sum is to bear interest from this date at the rate of six per cent per annum.

Now it is agreed between said parties that the said Thomas Bell shall hold said notes and mortgages for two hundred and sixteen thousand dollars made by Dwight W. Grover to him as security until he has been repaid all present and any future loans and advances which he may see fit to make to said John S. Bell, with like interest from the date of making the same; after which he shall, on demand, assign the same to said John S. Bell.

This agreement shall bind and be for the benefit of the heirs, executors, administrators and assigns of both of said parties.

Witness our hands the day and year first above written.

(Signed) Thomas Bell.

John S. Bell."

Triplicate.

John S. Bell, Esq., in account with Thomas Bell.

1887	Dr.		
Aug. 24	Balance a-c rendered this date.....	\$ 9,423.25	
" "	'Transfer to Dan'l Harris' acct.....	21,695.31	
" 25	Paid Barron heirs for your notes.....	40,000.00	
	Interest \$30,000 to 24 inst. 1 22-30		
	mo. at $7\frac{1}{2}$ pr. ct.....	325.00	
	Int. on \$10,000 to 24 inst. 1 29-20		
	mo. at $7\frac{1}{2}$ pr. ct.....	122.92	
" "	Pd. I. M. Lesser, search of		
	titles abstract	\$250	
	Jas. Wheeler, services in re		
	sale of land.....	200	
	Jas. Wheeler, exps. copying.....	20	
		\$470	
	prop. 27-35	367.57	
" "	Pd. you this date.....	100.00	
" 26	do	2,500.00	
			\$74,529.05

1887	Cr.		
Aug. 25	Rec'd acct. D. W. Grover		
	27-35 of	\$70,000	
	1st installment	54,000	
	less previously paid.....	5,000	
Aug. 26	Bal. brought down.....	25,529.05	
			\$74,529.05

E. E.

San Francisco, Aug. 25th, 1887. Thomas Bell.

Examined and found correct. John S. Bell.

1887

Aug. 27 Bal. in my favor.....\$29,529.05

20. That the sum of twenty-one thousand six hundred and ninety-five 31-100 dollars mentioned in the account annexed to said agreement was with interest the sum so borrowed from said Daniel Harris by John S. Bell and so repaid by said Thomas Bell to said Daniel Harris as aforesaid and the sums of forty thousand dollars, three hundred and twenty-five dollars and one hun-

dred and twenty-two 92-100 dollars also mentioned in said account were the amounts paid by said Thomas Bell in satisfaction of the two mortgages, so respectively made, executed and delivered and assigned to said Mary Barron, Roberta Barron, Robert Barron, Joseph Barron, William E. Barron, and Eustace Barron as aforesaid.

21. That thereafter by grant bearing date on the eighth day of June, 1888, and recorded in the office of said Recorder in Book 21 of Mortgages at page 441 on the ninth day of June, 1886, said Joseph N. H. Irwin re-conveyed to said Samuel Rosener said premises so conveyed to said Joseph N. H. Irwin by said Samuel Rosener by grant bearing date on the 25th day of August, 1887, and recorded in said Recorder's office in Book 15 of Deeds at page 622 on the 27th day of August, 1887, as aforesaid.

21. That theretofore and thereafter and between said 24th day of August, 1887, and the seventh day of March, 1889, said Dwight W. Grover, Samuel Rosener and Joseph N. H. Irwin sold and said Thomas Bell released from the lien of said mortgage of said first above-described of said two several tracts of land seventeen small portions of said first above-described of said two several tracts of land and pursuant to said agreement so bearing date on the 24th day of August, and recorded in Book C of Satisfactions of Mortgages at page 301 as aforesaid said Dwight W. Grover, Samuel Rosener and Joseph N. H. Irwin paid to said Thomas Bell four-fifths of all cash received for the same and assigned to said Thomas Bell six mortgages taken to secure deferred payments therefor, two whereof were thereafter and before said seventh day of March, 1889, satisfied by the payment to said Thomas Bell of the amounts of money secured thereby and all said moneys so received by said Thomas Bell were by him duly credited to said Dwight W. Grover on account of the first of said four promissory notes for fifty-four thousand dollars apiece pursuant to said agreement so bearing date on the 24th day of August, 1887, and recorded in the office of said Recorder in Book C of Satisfactions of

Mortgages at page 301 as aforesaid and further credited to said John S. Bell pursuant to said agreement between said Thomas Bell and said John S. Bell so bearing date on the 27th day of August, 1887, as aforesaid.

22. That in the meantime and between said 27th day of August, 1887, and the seventh day of March, 1889, said Thomas Bell continued to make further advances of money to said John S. Bell whereby the indebtedness of said John S. Bell to said Thomas Bell was increased, notwithstanding said credits and became and was the sum of \$40,850.27 on the 14th day of January, 1888, and more than \$54,000 in September, 1888, and \$66,544.62 on the 31st day of December, 1888.

23. That said Dwight W. Grover defaulted in the payment of all and every of the installments of interest that became due on said eight promissory notes on the 23rd day of February, 1888, and after extending to and including the 23rd day of November, 1888, the time for payment of all arrears of interest that accrued on said promissory notes to and including said date in consideration of a promise on the part of said Dwight W. Grover and Samuel Rosener to re-convey said two several tracts of land except said county roads, streets, railroads, cemetery and town lots and also except such portions thereof as has been sold by said Dwight W. Grover and said Samuel Rosener and after the refusal of said Dwight W. Grover and Samuel Rosener to perform said promise said Thomas Bell commenced on the third day of January, 1889, two actions in the Superior Court of the County of Santa Barbara in the State of California to foreclose respectively said two mortgages made, executed and delivered to said Thomas Bell by said Dwight W. Grover to secure the payment of said promissory notes as aforesaid.

24. That thereafter and pending said actions and both and each of them said Dwight W. Grover and Samuel Rosener offered in consideration of the satisfaction of said mortgages and the dismissal of said actions and the cancellation of said promissory notes to reconvey said two several tracts of land except county roads,

streets, railroads, cemetery and town lots and portions so sold by them as aforesaid and said Thomas Bell and John S. Bell thereupon accepted said offer and pursuant thereto and to said acceptance thereof said Dwight W. Grover and Samuel Rosener by grant bearing date on the seventh day of March, 1889, and recorded in the office of said Recorder in Book 24 of Deeds at page 495 on the third day of June, 1889, conveyed at the request of said Thomas Bell and with the knowledge, consent and acquiescence of said John S. Bell to said defendant George Staacke, who was at that time the partner and personal confidential clerk of said Thomas Bell and who personally paid no consideration therefor both and each of said two several tracts of land except said county roads, streets, railroads, cemetery and town lots and portions so sold by said Dwight W. Grover and Samuel Rosener as aforesaid and by assignment bearing date on said seventh day of March, 1889, and recorded in the office of said Recorder in Book B of Assignments of Mortgages at page 306 on said third day of June, 1889, said Dwight W. Grover and Samuel Rosener further assigned to said Thomas Bell all their right, title and interest to and in the four then still unsatisfied of said six mortgages so taken to secure deferred payments for said small portions so sold by said Dwight W. Grover, Samuel Rosener and Joseph N. H. Irwin of said first above-described of said two several tracts of land as aforesaid and thereupon by two satisfactions each bearing date on the eleventh day of March, 1889, and each recorded in the office of said Recorder in Book D of Satisfactions of Mortgages at page 237 on said third day of June, 1889, said Thomas Bell satisfied both and each of said mortgages so made, executed and delivered to said Thomas Bell to secure the payment of said eight promissory notes as aforesaid and on said third day of June, 1889, dismissed both and each of said actions and on the 20th of June, 1889, cancelled and delivered to said Dwight W. Grover by the hands of said defendant George Staacke all and every of said promissory notes.

25. That said grant by said Dwight W. Grover and

Samuel Rosener to said defendant George Staacke was not made, executed or delivered to said George Staacke or received by said George Staacke pursuant to any oral or other agreement between said Thomas Bell and said John S. Bell or pursuant to any intent or with any purpose on their part or on the part of either of them or on the part of Dwight W. Grover and Samuel Rosener or either of them that said first above-described of said two several tracts of land or any part or parts thereof should be conveyed to said John S. Bell by being first deeded and conveyed by said Dwight W. Grover and Samuel Rosener to said defendant George Staacke and then by said defendant George Staacke to said John S. Bell, nor did said defendant George Staacke accept or receive said grant in trust to convey said first above-described of said two several tracts of land or any part thereof to said John S. Bell, nor did said defendant George Staacke then or at any other time have notice of any such oral or other agreement or of any such intent or purpose as aforesaid, but on the contrary said Thomas Bell with the knowledge, consent and acquiescence of said John S. Bell requested said Dwight W. Grover and Samuel Rosener to make, execute and deliver said grant to said defendant George Staacke and requested said defendant George Staacke to receive and accept the same with the intent and purpose on the part of both said Thomas Bell and said John S. Bell that said defendant George Staacke should hold the legal title to the lands thereby conveyed for said Thomas Bell, who should possess, manage, administer and control the disposition of said second above-described of said two several tracts of land as his own forever and should also possess, manage, administer and control as his own said first above described of said two several tracts of land with the exceptions aforesaid until the same should be sold, to the end and in order that from the rents, issues and profits to be collected and received by said Thomas Bell from said first above-described of said two several tracts of land with the exceptions aforesaid and credited to said John S. Bell and from the price for

which the same should be sold all present and future indebtedness of said John S. Bell to said Thomas Bell should be repaid to said Thomas Bell in all respects as provided by said agreement between said Thomas Bell and John S. Bell so made and executed between them on the 27th day of August, 1887, as aforesaid with regard to the notes and mortgages therein mentioned and said Dwight W. Grover and Samuel Rosener executed and delivered said grant and said defendant George Saacke received and accepted the same pursuant to said requests so made with said intent and purpose on the part of both said Thomas Bell and said John S. Bell as aforesaid.

26. That thereupon and pursuant to said intent and purpose and with the knowledge, consent and acquiescence and in the presence of said John S. Bell said Thomas Bell took formal and actual possession in the name of said defendant George Staacke of both of said two several tracts of land with the exceptions aforesaid and held and continued to hold possession of both thereof and to collect and receive and credit to said John S. Bell on account the rents, issues and profits of said first above-described of said two several tracts of land until the death of said Thomas Bell as hereinafter found, in the meantime also crediting to said John S. Bell the amounts of said four unsatisfied mortgages so taken to secure deferred payments for small portions so sold by said Dwight W. Grover and Samuel Rosener as aforesaid of said first above-described of said two several tracts of land, all four of which were satisfied by payment to said Thomas Bell of said amounts thereby secured, but continuing after said 31st day of December, 1888 and until the death of said Thomas Bell as hereinafter found to make further advances of money to said John S. Bell whereby the indebtedness of said John S. Bell to said Thomas Bell was increased notwithstanding said credits and became and was on the 30th day of June, 1889, the sum of \$74,733.29, and on the 31st day of December, 1889, the sum of \$80,936.75, and on the 30th day of June, 1890 the sum of \$86,139.75

and on the 31st day of December, 1890, the sum of \$92,844.99 and on the 31st day of December, 1891 the sum of \$100,863.55.

27. That in the meantime by instrument of quit-claim bearing date on the 18th day of April, 1889 and recorded in the office of said recorder in Book 24 of Deeds at Page 491 on the third day of June, 1889, said Joseph N. H. Irwin quit-claimed to said Samuel Rosener said undivided two-fifths of both of said two several tracts of land excepting said county roads, streets, railroads, cemetery and town lots and by grant bearing date on the 26th day of April, 1889 and recorded in said Recorder's office in Book 24 of Deeds at Page 495 said Samuel Rosener conveyed all interest acquired by him by or through said instrument of quit-claim in said two several tracts of land with the exceptions aforesaid to said defendant George Staacke for the same consideration for which said Dwight W. Grover and Samuel Rosener had already conveyed said two several tracts of land except as aforesaid to said defendant George Staacke and in further confirmation and completion of their conveyance thereof to him.

28. That thereafter by agreement in writing bearing date on the sixth day of June, 1889 and recorded in the office of said Recorder in Book 24 of Deeds at Page 610 on the 22nd day of June, 1889 and as part of the same transaction by which said grant of said two several tracts of land with the exceptions aforesaid was made to said defendant George Staacke by said Dwight W. Grover and Samuel Rosener said defendant George Staacke agreed with said Samuel Rosener to sell to said Samuel Rosener both of said two several tracts of land with the exceptions aforesaid for two hundred and eighty thousand dollars at any time with—one year from said date and thereafter by instrument of quit-claim bearing date on the ninth day of June, 1890 and recorded in the office of said Recorder in Book 27 of Deeds at Page 374 on the 14th day of June, 1890, said Samuel Rosener quit-claimed to said defendant George Staacke said two

several tracts of land as in said agreement described.

29. That on or about the third day of December, 1891, said Thomas Bell notified said John S. Bell by letter that the indebtedness of said John S. Bell to said Thomas Bell had become inconvenient to said Thomas Bell and that said Thomas Bell might be compelled for the purpose of reducing the amount thereof to borrow money from said defendant San Francisco Savings Union upon the security of said first above-described of said two several parcels of land and thereafter for the purpose of removing said doubt whether said second above-described of said two several tracts of land had been effectually conveyed to said Dwight W. Grover by said grant so bearing date on the 23rd day of August, 1887 and recorded in said Recorder's office in Book 15 of Deeds at Page 613 as aforesaid, said Thomas Bell by instrument of quit-claim bearing date on the 28th day of January, 1892 and recorded in said Recorder's office in Book 33 of Deeds at Page 54 on the third day of February, 1892, quit-claimed said second above-described of said two several tracts of land to said defendant George Staacke and thereupon on the first day of February, 1892, said Thomas Bell borrowed for the benefit of said John S. Bell from said defendant San Francisco Savings Union the sum of sixty thousand dollars and credited the same to said John S. Bell on account and thereupon requested and caused said defendant George Staacke to make, execute and deliver to said defendant San Francisco Savings Union therefor the promissory note of said defendant George Staacke bearing date on said first day of February, 1892 whereby said defendant George Staacke promised to pay to said defendant San Francisco Savings Union in United States Gold Coin of the then existing standard on the first day of February, 1893, said principal sum of sixty thousand dollars with interest thereon at the monthly rate of two-thirds of one per cent. payable monthly on the first day of each and every month until payment of said principal, commencing on the day of the

date of said promissory note and agreed that in case of default in the payment of any of the amounts of said principal or interest then such amounts should bear interest from the date of their maturity until the day of payment at the rate of one per cent. per month and as part of the same transaction said Thomas Bell guaranteed in writing endorsed on said promissory note the payment of said principal sum and interest according to the terms of said promissory note with waiver of demand, notice of nonpayment, protest and notice of protest and with privilege to the payee thereof of granting extension of the time of payment of said principal sum and said Thomas Bell further with the acquiescence of said John S. Bell requested and caused said defendant George Staacke to make, execute and deliver to said Henry C. Campbell and to said defendant Thaddeus B. Kent as further security for the payment of said promissory note according to its terms a grant bearing date on said first day of February, 1892 and recorded in the office of said Recorder in Book 33 of Deeds at Page 56 on the third day of February, 1892, whereby said defendant George Staacke conveyed to said Henry C. Campbell and to said defendant Thaddeus B. Kent in joint tenancy and to the survivor of them, their successors and assigns the piece or parcel of land that is situate in the County of Santa Barbara in the State of California, and is part of the premises so conveyed to said defendant George Satacke by said Dwight W. Grover and Samuel Rosener as aforesaid and includes the whole of said second above-described of said two several tracts of land and is bounded and described as follows, to-wit:

Commencing at a post in a deep ravine on the Southerly boundary line of the Rancho de Los Alamos, in said County, being Station No. 2 of County Survey No. 357 made May 31, 1867 for James B. Shaw, from which post Station No. 1 of the official Survey of said Rancho, at the South-east corner thereof, bears South Seventy-seven degrees fifteen minutes (77 deg. 15 min.) East, eighty-five chains seventy-two

links (85.72 ch) distant; and running thence North seventy-eight degrees thirty minutes (78 deg. 30 min.) West, along said Southerly line of said Rancho, one hundred and seventy-nine chains seventy-five links (179.75 ch.), to a post on the South slope of a high mountain range, being Station No. 2 of County Survey No. 358 made for Thomas Bell; thence North two degrees forty-five minutes (2 deg. 45 min.) East, leaving said Southerly boundary line of said Rancho, two hundred and twenty chains eighty-four links (220.84 ch.), to station No. 3 of said County Survey No. 358; thence North four degrees fifty-five minutes (4 deg. 55 min.) East, one hundred and twenty-five chains eighty-four links (128.84 ch.), to a point thence South eighty-nine degrees (89 deg.) West, one hundred and fourteen chains eighty-nine links (114.89 ch.), to the South-east corner of the land of Jose Antonio Estrada, conveyed to him by deed dated August 16, 1867; thence North one degree twenty minutes (1 deg. 20 min.) East, along the Easterly line of said Estrada's land, three hundred and thirty-five chains twenty links (335.20 ch.), to a point on the Northerly boundary line of said Rancho de Los Alamos; thence East, along said Northerly boundary line, thirty-eight chains seventy links (38.70 ch.) to Post A. No. 10 of the Official Survey of said Rancho; thence South, forty (40) chains, to Post A. No. 9 of said Official Survey; thence East, Eighty chains eighty links (80.80 ch.), to Post A. No. 8 of said Official Survey, from which a Live Oak tree twenty-four (24) inches in diameter bears North thirty-five degrees thirty minutes (35 deg. 30 min.), East, one chain eighty-two links (1.82 ch.) distant; thence South, forty (40) chains, to Post A. No. 7 of said Official Survey, being a Live Oak tree; thence East, forty (40) chains, to Post A. No. 6 of said Official Survey, from which a Live Oak tree fourteen (14) inches in diameter bears South, fifty-three (53) links distant; thence South, forty (40) chains, to Post A. No. 5 of said Official Survey, from which a Live Oak tree fifteen (15) inches in diameter bears

North twenty-nine degrees thirty minutes (29 deg. 30 min.) East, fifty-eight (58) links distant; thence North eighty-nine degrees thirty minutes (89 deg. 30 min.) East, forty chains twenty links (40.20 ch.) to Post A. No. 4 of said Official Survey, from which a Live Oak tree ten (10) inches in diameter bears South thirty-eight degrees forty-five minutes (38 deg. 45 min.) West, one chain fifteen links (1.15 ch.) distant; thence South fifty-nine degrees (59 deg.) East, along said Northerly line of said Rancho, one hundred and fifteen (115) chains, to Station No. 4 of said County Survey No. 357; thence South four degrees thirty minutes (4 deg. 30 min.) West, along the line of said Survey, three hundred and seventeen chains ninety links (317.90 ch.), to Station No. 3 of said Survey; and thence South three degrees ten minutes (3 deg. 10 min.) West, two hundred and twenty chains eighty-four links (220.84 ch.) to the point of commencement;

Being that portion of said Rancho de Los Alamos that is laid down and delineated on the Map entitled "Map of the Subdivision of a part of the Rancho de Los Alamos Santa Barbara County, California. The property of D. W. Grover, Samuel Rosener, & J. N. H. Irwin Surveyed by R. R. Harris, Octr. and Nov. 1887," on file in the office of the County Recorder of said County of Santa Barbara, and to which map and the record thereof, special reference is hereby made;

Saving and excepting, however, from said portion of said Rancho so laid down and delineated on said map as aforesaid. Lots numbers twenty-three (23), twenty-eight (28), fifty-one (51), fifty-two (52), and fifty-three (53), and the Catholic and Protestant Cemetery Tracts in Lot number sixty-four (64), all as laid down and delineated on the Map to which reference is above made, and also saving and excepting that portion of said Lot number sixty-four (64) which is laid down and delineated on a map entitled "Map of the Town of Los Alamos situated in the County of Santa Barbara, surveyed for J. B. Shaw and John S. Bell September 15th, 1876, W. W. Bagster, Sur-

veyor," filed in the office of the County Recorder of said County of Santa Barbara on the first day of February, 1897 and now of record in Book B of Miscellaneous Records at page 406 therein;

The total acreage of the lands above described being Thirteen thousand two hundred (13,200) acres, more or less. To have and to hold the same as joint tenants and not as tenants in common with right of survivorship as such and to their successors and assigns with authority to them and to said defendant San Francisco Savings Union as party of the third part to said grant and to its successors and assigns to pay without previous notice all taxes, assessments and liens then subsisting or that might thereafter be imposed by National, State, County, City or other authority or that might appear prima facie to subsist or be imposed upon said premises to whomsoever assessed excepting such taxes and assessments as might be levied or imposed in accordance with Article XIII of the Constitution of the State of California upon said grant or the money secured thereby and whether so levied or imposed thereon as an interest in the property thereby affected or otherwise, and all or any incumbrances then subsisting or that might thereafter subsist thereon that might in their judgment affect said premises or the purposes of said grant at such time as in their judgment might seem best, or in their discretion to contest the payment of any such taxes, assessments, liens or incumbrances and upon the following trusts and confidences, to-wit: upon default in the payment of any principal or interest when due in the manner stipulated in and by said promissory note or upon default in the reimbursement of any amount paid pursuant to the foregoing authority with interest thereon at the rate of one per cent. per month until paid to sell upon demand of said defendant San Francisco Savings Union or its assigns said premises or such part thereof as in their discretion they might find necessary to sell for the accomplishment of the purposes of said grant in the manner following, namely: After first publishing the time and place of such sale with a

description of the property to be sold at least twice a week for three weeks in some newspaper published in the City and County of San Francisco in the State of California and also so publishing any postponement of said sale, to sell on the day of sale so advertised or to which such sale might be postponed either in said City and County of San Francisco or at their discretion in said county of Santa Barbara said piece or parcel of land as a whole or in their discretion in such reasonable parcels or subdivisions as they in their judgment might deem advisable to the highest cash bidder including if such should be the case the holder or holders of said promissory note, their agent or assigns or any member or director of said defendant San Francisco Savings Union, but in case of sale in said City and County of San Francisco after also so publishing the time and place of such sale in a newspaper issued in said county of Santa Barbara, and in any case upon condition that all bids and payments for said property should be made in like gold coin as aforesaid and after due payment made, to deliver to the purchaser or purchasers, his or their heirs or assigns a deed or deeds of the premises so sold and out of the proceeds thereof to pay, first, the expenses of such sale together with the reasonable expenses of said trusts including counsel fees of Three Thousand dollars in gold coin which should become due upon any default in any of the payments aforesaid; second, all sums that might have been paid under or in accordance with the provisions of said grant by said defendant San Francisco Savings Union or said Henry C. Campbell and by said defendant Thaddeus B. Kent their successors or assigns or the holders of said promissory note and not reimbursed and that might then be due with whatever interest might have accrued thereon; next, the amount due and unpaid on said promissory note with whatever interest might have accrued thereon and lastly the balance or surplus of such proceeds, if any, to said defendant George Staacke, his heirs or assigns and it was expressly covenanted in and by said grant that in the event of the sale of said premises or

any part thereof and the execution of a deed or deeds therefor under said trusts, then the recitals therein of default and publication of notice of sale and of a demand by said defendant San Francisco Savings Union its successors or assigns that such sale should be made should be conclusive proof of such default and of the due publication of such notice and that the sale was made on due and proper demand by said defendant San Francisco Savings Union its successors or assigns and any such deed or deeds should be effectual and conclusive against said defendant George Staacke, his heirs or assigns and all other persons as to such default publication and demand and the receipt for the purchase money contained in any deed executed to a purchaser as aforesaid should be a sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase money according to said trusts.

30. That said John S. Bell had knowledge of the execution of said grant by said defendant George Staacke to said Henry C. Campbell and said defendant Thaddeus B. Kent and of the occasion, purpose and terms thereof and of the transaction of which the same formed a part as aforesaid immediately after the execution, delivery and recording of said grant as aforesaid and on or about the tenth day of February, 1892 was informed of all said matters by said Thomas Bell by letter and said John S. Bell thereupon acquiesced in said transaction and in every part thereof with full knowledge of the same including the execution and delivery of said grant and consented thereto and knew of said credit of said sum of Sixty Thousand dollars to himself on account and accepted the same.

31. That at all the time and times hereinabove mentioned said defendant George Staacke knew of the relations between said Thomas Bell and said John S. Bell as the same are hereinabove found and at the time of executing said grant to said Henry C. Campbell and to said defendant Thaddeus B. Kent said defendant George Staacke knew of the authority of said

Thomas Bell to act for said John S. Bell in said transaction of which said grant formed a part and of the acquiescence of said John S. Bell therein and of the consent of said John S. Bell thereto, but said defendant San Francisco Savings Union had not nor did said Henry C. Campbell or said defendant Thaddeus B. Kent have any notice at said time or until about four years thereafter of any interest of said John S. Bell in said piece or parcel of land described in said grant nor did they or any of them have notice or knowledge of any fact or circumstance of such character as to put them or any of them upon inquiry or to require them or any of them to inquire concerning the same nor has said John S. Bell ever been in possession of said land or any part thereof at any time since the conveyance of the same by said Thomas Bell and John S. Bell to said Dwight W. Grover as aforesaid.

32. That notwithstanding said credit of said sum of Sixty Thousand dollars by said Thomas Bell to said John S. Bell on account, the indebtedness of said John S. Bell to said Thomas Bell became and was on the 16th day of October, 1892 the sum of \$52,120.15.

33. That said Thomas Bell died on said 16th day of October, 1892 leaving a last will and testament wherein and whereby he appointed Henry Pichoir, John W. C. Maxwell and said defendant George Staacke the Executors thereof and on the 7th day of November, 1892 Letters Testamentary were duly issued to them accordingly by the Superior Court of the County of San Francisco in the State of California; and thereafter on the 30th day of December 1892 said Henry Pichoir duly resigned his trust as such Executor as aforesaid and by order of said Court was duly discharged from his duties as such Executor on said day; and said John W. C. Maxwell duly resigned his trust as such Executor as aforesaid on the 5th day of August, 1898 and was duly discharged from his duties as such Executor by order of said Court on the 13th day of September, 1898; and the powers of said defendant George Staacke as such Executor as aforesaid were suspended by order of said Court on the

23rd day of March, 1900 and Special Letters of Administration of the Estate of said Thomas Bell were thereupon duly issued out of said Court to the above-named defendant Teresa Bell on said day and thereafter on the third day of May, 1900, the Letters Testamentary so issued to said defendant George Staacke as aforesaid were revoked by order of said Court and Letters of Administration of the Estate of Thomas Bell deceased, with the Will annexed were thereafter on the 19th day of February, 1902 duly issued out of said Court to said defendant Teresa Bell and have not since been revoked but are still in full force and effect.

34. That in the meantime and on the 8th day of March 1893 said John S. Bell commenced an action in this Court against said defendant George Staacke and against the said Executors at that time of the last will and testament of Thomas Bell, deceased, wherein and whereby he claimed to be the owner in equity of said tract of land containing about ten thousand acres and demanded judgment that said defendant George Staacke convey the same as holder of the naked legal title thereto for that purpose to said John S. Bell; and thereafter and pending said action, by instrument in writing bearing date on the 22nd day of December, 1896 and recorded in said Recorder's office on the 31st day of December, 1896 in Book 59 of Deeds at Page 33 said John S. Bell freely and acting under no mistake, misapprehension, undue influence, oppression or unfair advantage taken by any one of his necessities or distress and said defendant George Staacke freely and not in pursuance or by authority or direction of any judgment, whether valid or invalid agreed with said defendant San Francisco Savings Union that the time for payment of the principal of said promissory note of said defendant George Staacke should be extended until the 22nd day of December, 1898 and that the security therefor created by said grant by said defendant George Staacke to said Henry C. Campbell and said defendant Thaddeus B. Kent should be and remain a first charge on said piece or parcel of land in said grant described, and thereafter by grant bearing

date on said 22nd day of December, 1896, but actually made, executed and delivered on the sixth day of January, 1897, and recorded in the office of said Recorder on the 18th day of June, 1897 in Book 59 of Deeds at Page 579 said John S. Bell for a valuable consideration purported to convey both of said two several tracts of land to said plaintiff Kate M. Bell and by grant bearing date on the 12th day of June, 1897 and recorded in said Recorder's office on the 18th day of June, 1897 in Book 59 of Deeds at Page 582 said plaintiff Kate M. Bell and said John S. Bell purported to convey an undivided half of both of said two several tracts of land with the exceptions aforesaid to said plaintiff James L. Crittenden and to Sidney M. Van Wyck, Jr., both of whom had full actual knowledge of said agreement so recorded in said Recorder's office in Book 59 of Deeds at Page 33 as aforesaid and by grant bearing date on the 7th day of March, 1899 and recorded in said Recorder's office on the 26th day of November, 1900 in Book 75 of Deeds at Page 223 said Sidney M. Van Wyck, Jr., conveyed to said plaintiff James L. Crittenden all his right, title and interest to or in both of said two several tracts of land with the exceptions aforesaid, and thereafter by grant bearing date on the 18th day of September, 1902, and recorded in said Recorder's office in Book 84 of Deeds at Page 253 on the 26th day of September, 1902, said plaintiff James L. Crittenden and Nina D. Crittenden, his wife, purported to convey to said defendant to said cross-complaint U. S. Oil & Land Company said undivided one half of said first above described of said two several tracts of land with the exceptions aforesaid but no taxes upon said two several tracts of land or either of them or any part thereof have ever been paid by said plaintiffs Kate M. Bell and James L. Crittenden or either of them or by said Sidney M. Van Wyck, Jr., or by said defendant to cross-complaint U. S. Oil & Land Company since said 22nd day of December, 1896 nor did said plaintiff Kate M. Bell ever enter into possession of any part of either of said two several tracts of land until long after said

sixth day of January, 1897.

35. That on the 27th day of April, 1893 and within the time allowed by law for that purpose, said defendant San Francisco Savings Union duly presented to said executors at that time of the last will and testament of said Thomas Bell, deceased, George Staacke and John W. C. Maxwell its duly verified claim against the estate of said Thomas Bell, deceased, founded on said promissory note and said guaranty of the payment thereof by said Thomas Bell, stating the same to be secured by said grant in trust to said Henry C. Campbell and said defendant Thaddeus B. Kent and claiming the right to enforce the payment of said claim in the manner stipulated in said grant describing said grant and referring to the date, volume and page of its record and said executors endorsed their allowance of said claim thereon on said day and the same was on the 17th day of May, 1893 further allowed and approved by a Judge of said Superior Court of the County of San Francisco in manner and form as required by law.

36. That in and by said grant by said defendant George Staacke to said Henry C. Campbell and said defendant Thaddeus B. Kent in trust as aforesaid, it was further expressly covenanted that said defendant San Francisco Savings Union might by resolution of its Board of Directors from time to time appoint another Trustee or trustees to execute the trusts thereby created and upon such appointment and a conveyance by said grantees the survivor of them, their successors or assigns, to such appointee or appointees, such appointee or appointees should be vested with all the title, interest, powers, duties and trusts in the premises vested by said grant in said grantees or thereby conferred upon the same and such appointees or new trustees should be considered the successors and assigns of said grantees and by resolution of said Board of Directors of said defendant San Francisco Savings Union duly adopted by said Board of Directors at a regular meeting thereof held on the 24th day of February, 1898 said defendant San Francisco Savings

Union duly appointed said defendant Edward B. Pond and said Henry C. Campbell trustees to execute the trusts created by said grant bearing date on the first day of February, 1902 and recorded in said Recorder's office in Liber 33 of Deeds at Page 56 on the third day of February, 1902 as aforesaid and thereupon by conveyance bearing date on the 28th day of February, 1898 and recorded in said Recorder's office in Book 61 of Deeds at Page 408 on the fourth day of March, 1898 said Henry C. Campbell and said defendant Thaddeus B. Kent vested said Henry C. Campbell and said defendant Edward B. Pond with all the title, interest, powers, duties and trusts in the premises by said grant vested in the grantees therein named or conferred upon them and said Henry C. Campbell and said defendant Edward B. Pond became entitled to be considered the successors and assigns of said grantees so named in said grant within the meaning thereof and by further resolution of said Board of Directors adopted by said Board of Directors at a regular meeting thereof held on the first day of November, 1900, said defendant San Francisco Savings Union further duly appointed said defendant Mercantile Trust Company of San Francisco trustee to execute said trusts and thereupon by conveyance bearing date on the fifth day of November, 1900 and recorded in the office of said Recorder in Book 75 of Deeds at page 154 on the 13th day of November, 1900, said Henry C. Campbell and said defendant Edward B. Pond vested said defendant Mercantile Trust Company of San Francisco with all said title, interests, powers, duties and trusts and said defendant Mercantile Trust Company of San Francisco thereby became entitled to be considered and ever since has been and now is the successor and assign of said grantees to named in said grant within the meaning thereof.

37. That the principal of said promissory note of said defendant George Staacke has not been paid nor has any part thereof been paid and no interest has been paid thereon except the interest thereon to the first day of November, 1896 and said defendant San Fran-

cisco Savings Union has paid taxes under and pursuant to said authorization for that purpose contained in said grant in trust by said defendant George Staacke to said Henry C. Campbell and said defendant Thaddeus B. Kent upon the following dates, for the following years, to the following amounts upon the following premises, to-wit:

(a) Upon so much of said piece or parcel of land so described in said grant in trust as does not include said second above-described of said two several tracts of land.

July 7, 1898, Taxes of 1897.....	435.94
May 31, 1899, Taxes of 1898.....	227.92
June 14, 1900, Taxes of 1899.....	518.68
April 4, 1904, Taxes of 1900, 1901, 1902	3645.58
July 14, 1904, Taxes of 1903.....	1201.55

Total.....\$6029.67

(b) Upon said second above-described of said two several tracts of land.

July 7, 1898, Taxes of 1897.....	173.30
May 31, 1899, Taxes of 1898.....	13.12

Forward.....\$186.42

Brought Forward.....\$186.42

June 14, 1900, Taxes of 1899.....	29.87
June 26, 1901, Taxes of 1900.....	192.88
June 26, 1902, Taxes of 1901.....	153.94
June 22, 1903, Taxes of 1902.....	185.29
April 4, 1904, Taxes of 1903.....	321.61

Total.....\$1070.01

and the amount due to said defendant San Francisco Savings Union including interest to the date of this decision on said promissory note is the sum of \$148,-052 52-100 and on said taxes the total whereof is \$6,029.67 as aforesaid is the sum of \$6583 86-100 and on said taxes the total whereof is \$1,070.01 as aforesaid is the sum of \$1168 29-100, making an aggregate total of the sum of One hundred and fifty-five Thousand

eight hundred and four 67-100 dollars, no part whereof has been reimbursed.

38. That said defendant San Francisco Savings Union has duly demanded of said defendant Mercantile Trust Company of San Francisco the sale of said piece or parcel of land so described in said grant in trust as aforesaid and the execution thereby and thereupon of the trusts in said grant contained.

39. That it was never understood or agreed by or between said defendants San Francisco Savings Union and George Staacke that in case said defendant San Francisco Savings Union should have to resort to sale of said piece or parcel of land so described in said grant in trust as aforesaid for the payment of said principal or interest of said promissory note of said defendant George Staacke, said first above-described of said two several tracts of land or any part thereof should be first sold or that said second above-described of said two tracts of land should not be sold unless there was a deficiency still due said defendant San Francisco Savings Union after the sale of said first above-described of said two several tracts of land.

40. That said action so commenced on the 8th day of March, 1893 by said John S. Bell against said defendant George Staacke and said executors at that time of the last Will and Testament of Thomas Bell, deceased, is still pending in this Court and is numbered 2826 in the Register of Actions and Proceedings in the office of the Clerk of this Court and the relations between said John S. Bell and his grantees of said first above-described of said two several tracts of land on the one hand and said defendants George Staacke and Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, with the will annexed, on the other hand in respect of said indebtedness of said John S. Bell to said Thomas Bell and in respect of said first above-described of said two several tracts of land and all or any parts thereof are involved in said action and constitute the subject matter thereof and are in course of judicial determination and settlement therein.

CONCLUSIONS OF LAW.

1. That said defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco are entitled to judgment herein that said plaintiffs Kate M. Bell and James L. Crittenden and said defendant to cross-complaint U. S. Oil & Land Company take nothing by this action and that said defendant Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, take nothing by this action except as hereinafter adjudged.

2. That said defendant Edward B. Pond, Thaddeus B. Kent and Mercantile Trust Company of San Francisco are entitled to judgment herein that said Henry C. Campbell did not have at the time of his death and said defendants Edward B. Pond and Thaddeus B. Kent have not nor has either of them any interest in said two several tracts of land or in either of them or in any part thereof or any duties or duty with respect thereto.

3. That said defendant San Francisco Savings Union, George Staacke and Mercantile Trust Company of San Francisco are entitled to judgment herein that said grant in trust by said defendant George Staacke to said Henry C. Campbell and said Thaddeus B. Kent is a good and valid grant of the piece or parcel of land therein described upon the trusts therein mentioned, whereof said defendant Mercantile Trust Company of San Francisco is now the trustee and that this Court having been vested by this action with jurisdiction with respect to said two several tracts of land for the purposes of determining the issues raised herein by the complaint of said plaintiff and the answers thereto retain said jurisdiction for the purpose of doing complete justice and determining completely all controversies with respect to said two tracts of land and for that purpose take under its direction and control the execution by said defendant Mercantile Trust Company of San Francisco of the trusts created by

said grant so recorded in the office of said Recorder of the County of Santa Barbara in the State of California in Book 33 of Deeds at Page 56 as aforesaid and direct, instruct and supervise said defendant Mercantile Trust Company of San Francisco in executing said trusts in accordance with this decision and ratify and confirm by its orders the execution thereof by said defendant Mercantile Trust Company of San Francisco in accordance with this decision to the end that the title of any purchaser of said two tracts of land or of either of them or of any part thereof from said defendant Mercantile Trust Company of San Francisco may be quieted in this action against any and all claims of the parties hereto or of any of them.

4. That said defendant Teresa Bell as Administratrix of the estate of Thomas Bell, deceased, with the Will annexed, is entitled to Judgment herein that so much of said piece or parcel of land described in said grant in trust as does not include said second above-described of said two several tracts of land be first sold by said defendant Mercantile Trust Company of San Francisco in the execution of said trusts to the end that to the extent of the proceeds thereof the amount of said promissory note and interest may be paid out of said proceeds but said defendant Teresa Bell as Administratrix of the estate of Thomas Bell, deceased, with the will annexed, is entitled to no other judgment herein.

5. That said defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco are entitled to recover from said plaintiffs Kate M. Bell and James L. Crittenden and said defendant to cross-complaint U. S. Oil & Land Company their costs in this action incurred.

Dated Santa Barbara, California, March 14th, 1905.

J. W. Taggart,

Judge of the Superior Court.

Filed March 14th, 1905. C. A. Hunt, Clerk.

That the judgment and decree in said action No.

4424, so made and filed as aforesaid, on the 14th day of March, 1905, was as plaintiff is informed and believes, thereafter duly entered in said Superior Court, and is in the words and figures following, to wit:

In the Superior Court of the County of Santa Barbara,
State of California.

Kate M. Bell and James L. Crittenden, Plaintiffs,
vs.

San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke, Teresa Bell, Thomas Frederick Bell, Marie Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, Teresa Bell, as Guardian of the Persons and Estates of said Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, John Doe, Richard Roe, Jane Doe, Mary Roe and Mercantile Trust Company of San Francisco, defendants.

U. S. Oil & Land Company, Defendant to cross-complaint.

JUDGMENT.

Upon the pleadings and all the other papers heretofore filed and all the proceedings heretofore had in the above entitled action and in particular upon the decision of this Court this day given and filed herein and on motion of Canfield & Starbuck, Esqs., attorneys herein for the above-named defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco, it is hereby

Adjudged that the above-named plaintiffs Kate M. Bell and James L. Crittenden and the above-named defendant to cross-complaint U. S. Oil & Land Company jointly and severally take nothing by this action and that the above-named defendant Teresa Bell as administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, take nothing by this action except as hereinafter adjudged.

And it is hereby further adjudged that Henry C.

Campbell, formerly a party defendant to this action but now deceased, had not at the time of his death and that the said defendants Edward B. Pond and Thaddeus B. Kent have not nor has either of them any interest in this action or the subject matter thereof or any duty or duties with respect to this action or to said subject matter thereof.

And it is hereby further adjudged that the grant made, executed and delivered by said defendant George Staacke to said Henry C. Campbell and to said defendant Thaddeus B. Kent, bearing date on the first day of February, 1892 and recorded in the office of the Recorder of the County of Santa Barbara in the State of California in Book 33 of Deeds at page 56 on the third day of February, 1892 is a good and valid grant of the piece or parcel of land herein described upon the trusts therein mentioned, whereof said defendant Mercantile Trust Company of San Francisco is now the sole trustee and that said trusts are enforceable herein and the enforcement thereof is not barred by any statute of limitations of this State.

And it is hereby further adjudged that said defendant Mercantile Trust Company of San Francisco be and hereby is ordered and directed to execute said trusts and for that purpose to publish at least twice a week for three weeks in the Daily Journal of Commerce, a newspaper published in the City and County of San Francisco in the State of California and also in the Independent, a newspaper published in the City of Santa Barbara in the County of Santa Barabara in said State a notice of the time of a sale of the piece or parcel of land in said grant described at public auction to the highest cash bidder in gold coin of the United States of the Standard of 1892 in front of the Court house in said city of Santa Barbara in two several tracts which shall be described in said notice as follows, to-wit: First. All that certain lot, piece or parcel of land containing about 9,200 acres situate in the County of Santa Barbara in the State of California and bounded and described as follows:

Commencing at a post in a deep ravine on the

Southerly boundary line of the Rancho de Los Alamos, in said County, being Station No. 2 of County Survey No. 357 made May 31, 1867 for James B. Shaw, from which post Station No. 1 of the Official Survey of said Rancho, at the South-east corner thereof, bears South Seventy-seven degrees fifteen minutes (77 deg. 15 min.) East, eighty-five chains seventy-two links (85.72 ch.) distant; and running thence North seventy-eight degrees thirty minutes (78 deg. 30 min.) West, along said Southerly line of said Rancho one hundred and seventy-nine chains seventy-five links (179.75 ch.), to a post on the South slope of a high mountain range, being Station No. 2 of County Survey No. 358 made for Thomas Bell; thence North two degrees forty-five minutes (2 deg. 45 min.) East, leaving said Southerly boundary line of said Rancho, two hundred and twenty chains eighty-four links (220.84 ch.); to station No. 3 of said County Survey No. 358; thence North four degrees fifty-five minutes (4 deg. 55 min.) East, one hundred and twenty-five chains eighty-four links (128.84 ch.), to a point thence South eighty-nine degrees (89 deg.) West, one hundred and fourteen chains eighty-nine links (114.89 ch.), to the South-east corner of the land of Jose Antonio Estrada, conveyed to him by deed dated August 16, 1867; thence North one degree twenty minutes (1 deg. 20 min.) East, along the Easterly line of said Estrada's land, three hundred and thirty-five chains twenty links (335.20 ch.), to a point on the Northerly boundary line of said Rancho de Los Alamos; thence East, along said Northerly boundary line, thirty-eight chains seventy links (38.70 ch.), to Post A. No. 10 of the Official Survey of said Rancho; thence South, forty (40) chains, to Post A. No. 9 of said Official Survey; thence East, Eighty chains eighty links (80.80 ch.), to Post A. No. 8 of said Official Survey, from which a Live Oak tree twenty-four (24) inches in diameter bears North thirty-five degrees thirty minutes (35 deg. 30 min.), East, one chain eighty-two links (1.82 ch.) distant; thence South, forty (40) chains, to Post A. No. 7 of

said Official Survey, being a Live Oak tree; thence East, forty (40) chains, to Post A. No. 6 of said Official Survey, from which a Live Oak tree fourteen (14) inches in diameter bears South fifty-three (53) links distant; thence South, forty (40) chains, to Post A. No. 5 of said Official Survey, from which a Live Oak tree fifteen (15) inches in diameter bears North twenty-nine degrees thirty minutes (29 deg. 30 min.) East, fifty-eight (58) links distant; thence North eighty-nine degrees thirty minutes (89 deg. 30 min.) East, forty chains twenty links (40.20 ch.) to Post A. No. 4 of said Official Survey, from which a Live Oak tree ten (10) inches in diameter bears South thirty-eight degrees forty-five minutes (38 deg. 45 min.) West, one chain fifteen links (1.15 ch.) distant; thence South fifty-nine degrees (59 deg.) East, along said Northerly line of said Rancho, one hundred and fifteen (115) chains, to Station No. 4 of said County Survey No. 357; thence South four degrees thirty minutes (4 deg. 30 min.) West, along the line of said Survey, three hundred and seventeen chains ninety links (317.90 ch.), to Station No. 3 of said Survey; and thence South three degrees ten minutes (3 deg. 10 min.) West, two hundred and twenty chains eighty-four links (220.84 ch.), to the point of commencement;

Being that portion of said Rancho de Los Alamos that is laid down and delineated on the Map entitled "Map of the Subdivision of a part of the Rancho de Los Alamos, Santa Barbara County, California. The property of D. W. Grover, Samuel Rosener & J. N. H. Irwin. Surveyed by R. R. Harris, Octr. and Nov. 1887," on file in the office of the County Recorder of said County of Santa Barbara, and to which map and the record thereof, special reference is hereby made.

Saving and excepting, however, from said portion of said Rancho so laid down and delineated on said map as aforesaid. Lots numbers twenty-three (23), twenty-eight (28), fifty-one (51), fifty-two (52) and fifty-three (53), and the Catholic and Protestant Cemetery Tracts in Lot number sixty-four (64), all

as laid down and delineated on the Map to which reference is above made, and also saving and excepting that portion of said Lot number sixty-four (64) which is laid down and delineated on a Map entitled "Map of the Town of Los Alamos situated in the County of Santa Barbara, surveyed for J. B. Shaw and John S. Bell September 15th, 1876, W. W. Bagster, Surveyor", filed in the office of the County Recorder of said County of Santa Barbara on the first day of February, 1879, and now of record in Book B of Miscellaneous Records at page 406 therein;

And also saving and excepting all that certain lot, piece or parcel of land containing about 4000 acres situated in the County of Santa Barbara in the State of California and bounded and particularly described as follows, to-wit: Commencing at the Southeast corner of the land of Jose Antonio Estrada which was conveyed to him by deed dated August sixteenth, 1867, thence running due East to land conveyed by Jose Antonio de la Guerra to Thomas Bell by deed bearing date on the 26th day of June, 1867; thence along the western boundary of last mentioned land of Thomas Bell to its intersection with the Northern boundary line of the Rancho de Los Alamos; thence west along the said Northern boundary line to the lands of Jose Antonio Estrada as conveyed to him by the said deed of August 16th, 1867; thence South along the Eastern boundary line of said Estrada's land to place of beginning.

Second. All that certain lot, piece or parcel of land containing about 4,000 acres situated in the County of Santa Barbara, in the State of California and bounded and particularly described as follows, to-wit: Commencing at the Southeast corner of the land of Jose Antonio Estrada which was conveyed to him by deed dated August sixteenth, 1867, thence running due East to land conveyed by Jose Antonio de la Guerra to Thomas Bell by Deed bearing date on the 26th day of June, 1867; thence South along the Eastern boundary of last mentioned land of Thomas Bell to its intersection with the Northern boundary

line of the Rancho de Los Alamos; thence west along the said Northern boundary line to the lands of Jose Antonio Estrada as conveyed to him by said deed of August 16th 1867; thence South along the Eastern boundary line of said Estrada's land to place of beginning; with authority which is hereby adjudged to be vested in said defendant Mercantile Trust Company of San Francisco to postpone said sale from time to time by publication in said newspapers and in both and each of them.

And it is hereby further adjudged that for the purpose of further executing said trusts said defendant Mercantile Trust Company of San Francisco be and hereby is further ordered and directed to sell at said time of sale mentioned in said notice or at the time to which said sale may have been postponed as the case may be, and pursuant to the terms of said notice the first above-described of said two several tracts of land and in case the highest amount bid therefor shall not be sufficient to pay the expenses of said sale together with the reasonable expenses of said trusts including counsel fees of Three Thousand dollars and the just and full sum of one hundred and fifty-five thousand eight hundred and four 67-100 dollars with interest thereon from the date hereof, then and in that case but not otherwise to sell at said time and place and pursuant to said terms of said notice the second above-described of said two several tracts of land and in either case thereupon to report its proceedings to this Court and upon confirmation of said sale or sales as the case may be by order of this Court to be entered upon said report, to make and execute and upon payment of the amounts bid for the same respectively to deliver to the purchaser or purchasers, his or their heirs and assigns, a grant or grants of the said tract or tracts of land so sold as aforesaid.

And it is hereby further adjudged that the recitals in said grant or grants so to be delivered by said defendant Mercantile Trust Company of San Francisco as aforesaid of default in the payment or payments mentioned in said grant in trust and of publication

of notice of sale and of a demand by said defendant San Francisco Savings Union, its successors or assigns, that such sale should be made shall be conclusive proof of such default and of the due publication of such notice and that the sale was made on due and proper demand by said defendant San Francisco Savings Union, its successors or assigns, and any such grant or grants so delivered by said defendant Mercantile Trust Company of San Francisco as aforesaid with such recitals therein shall be effectual and conclusive against the said defendant George Staacke, his heirs or assigns, and all other persons as to such default, publication and demand and the receipt for the purchase money contained in any said grant or grants so executed and delivered to a purchaser or purchasers by said defendant Mercantile Trust Company of San Francisco as aforesaid shall be a sufficient discharge or discharges to such purchaser or purchasers from all obligations to see to the proper application of the purchase money according to the trusts aforesaid.

And it is hereby further adjudged that for the purpose of further executing said trusts said defendant Mercantile Trust Company of San Francisco be and hereby is further ordered and directed to pay out of the proceeds of said sale or sales as the case may be, first, the expenses of said sale or sales, together with the reasonable expenses of said trusts including counsel fees of Three Thousand dollars in gold coin, and second, to the said defendant San Francisco Savings Union the just and full sum of seven thousand seven hundred and fifty-two 15-100 dollars with interest thereon from the date hereof and next to said defendant San Francisco Savings Union the just and full sum of One hundred and forty-eight Thousand and fifty-two 52-100 dollars (\$148052 52-100) with interest thereon from the date hereof, and lastly the balance of said proceeds if any, to said defendant George Staacke, his heirs or assigns, and thereupon to report its proceedings to this Court upon confirmation whereof by order of this Court thereupon to be duly entered

herein said defendant Mercantile Trust Company of San Francisco shall be discharged from all liability as such Trustee as aforesaid.

And it is hereby further adjudged that said defendants San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco recover from said plaintiffs Kate M. Bell and James L. Crittenden and from said defendant to cross-complaint U. S. Oil & Land Company the sum of dollars, their costs in this action incurred.

Dated Santa Barbara, California, March 14th, 1905.

J. W. Taggart,

Judge of the Superior Court.

Filed March 14th, 1905. C. A. Hunt, Clerk.

Your orator, further complaining shows, avers and alleges that on the eighth day of September, 1905, the said U. S. Oil & Land Company and James L. Crittenden, by notice of appeal and by giving the undertaking required by law, duly appealed from the judgment in said action No. 4424 to the Supreme Court of the State of California; that thereafter and on the tenth day of April, 1906, said U. S. Oil & Land Company and said James L. Crittenden by written notice of appeal and by giving the undertaking required by law duly took and perfected an appeal to the said supreme court from an order made in said action No. 4424 denying their motion for a new trial; that the said Teresa Bell, as such administratrix, also took and perfected an appeal from said judgment in said action No. 4424 to said Supreme Court; that such proceedings were thereafter duly had on said appeals that said judgment and order denying a new trial in said action No. 4424 were duly affirmed on the 14th day of February, 1908, and that said decree so affirmed has ever since been and now is in full force.

11th. Your orator further complaining, shows, avers and alleges on information and belief that the value of the said tract, piece and parcel of land, consisting of 10,067.2 acres has greatly increased by reason of the discovery of oil therein and in the adjoin-

ing lands, and that the said 10,067.2 acres of land is now of the value of at least three millions (\$3,000,000.00) dollars; that the said Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, has voluntarily paid to the Mercantile Trust Company of San Francisco, and to said San Francisco Savings Union \$179,411.40, the full amount due said San Francisco Savings Union on its claim against said estate of Thomas Bell, deceased, as adjudged and decreed in and by said judgment in the said action No. 4424; that on the 16th day of June, 1908, the said Teresa Bell, as such administratrix, by her attorney, T. Z. Blakeman, Esq., and said San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent and Mercantile Trust Company of San Francisco by their attorneys, Canfield & Starbuck, Esq., made and filed in said Superior Court in said action No. 4424 a written stipulation stating and declaring that the total amount due to said San Francisco Savings Union was \$179,411.40 and that said amount had been paid to the said San Francisco Savings Union by the said Teresa Bell as such administratrix, without any sale of the lands in said judgment described, and that it was therefore, stipulated, that the said judgment in said action No. 4424 be and was satisfied, and that the Clerk of the said Superior Court was directed to enter satisfaction of said judgment; that said payment so made as aforesaid by said Teresa Bell as such administratrix, was made with the intent, object and design of depriving the complainant of its right and interest of, in and to said undivided one-half of 10,067.2 acres of land, and of its right, interest and equity in and to such portion of the proceeds of the sale of the said 10,067.2 acres of land as should or would remain after the sale of said lands by said Mercantile Trust Company of San Francisco, under and in accordance with said judgment and decree in said action No. 4424; that with such intent, purpose, object and design, and to obtain an unfair and unconscionable advantage over this complainant the said Teresa Bell upon making said payment of \$179,411.40,

obtained from said Mercantile Trust Company of San Francisco and from said San Francisco Savings Union an instrument in writing purporting and pretending to grant, bargain, sell and convey said 10,067.2 acres of land with the exception of those pieces and parcels excepted therefrom by and in said judgment to said Teresa Bell, as administratrix of the estate of Thomas Bell, deceased; that the making and execution of the conveyance or instrument to said Teresa Bell as such administratrix by said Mercantile Trust Company of San Francisco and by said San Francisco Savings Union hereinabove mentioned in this paragraph, was contrary to and in violation of said judgment in said action No. 4424, of the provisions of said judgment, and of the trust therein adjudged and declared, and was wrongful, fraudulent and unlawful and in violation of the rights and interests of the U. S. Oil & Land Company under said Judgment and decree in said action No. 4424 and under said judgment dated June 29th, 1901; that said pretended deed and conveyance so obtained as aforesaid by said Teresa Bell as such administratrix from said Mercantile Trust Company of San Francisco and said San Francisco Savings Union was dated May 26th, 1908, and was recorded at the request of said Teresa Bell as such administratrix on the 15th day of June, 1908, by the County Recorder of Santa Barbara County in Book of Deeds No. 118 on the pages 585 to 589 thereof; that one of the considerations for the making and execution of said pretended deed and conveyance of May 26th, 1908 to said Teresa Bell as such administratrix, as stated in said pretended deed, was the payment of the sum due and payable to said San Francisco Savings Union under and by virtue of said judgment in said action No. 4424; that said pretended sale and transfer by said Mercantile Trust Company of San Francisco was made under and in pursuance of a combination and conspiracy entered into by the said Mercantile Trust Company, San Francisco Savings Union and said Teresa Bell with the wrongful, unlawful and fraudulent intent, object, purpose and de-

sign to defraud the said U. S. Oil & Land Company out of its right, title and interest in said 10,067.2 acres of land and out of its right, title and interest in and to the proceeds of a sale of said land remaining after the payment of the sums of money ordered by said decree to be paid, and also to evade and defeat the provisions of said judgment and decree in said action No. 4424 requiring said land to be sold at public auction upon and after publication of notice of any proposed sale in certain newspapers, and that said pretended sale and transfer was made secretly without any notice whatever thereof or of any proposed sale being given or published in any newspaper and without any notice whatever being given to said U. S. Oil & Land Company in pursuance and execution of the said combination and conspiracy and with the fraudulent intents, objects, purposes and designs aforesaid; that the said Teresa Bell, Mercantile Trust Company and San Francisco Savings Union knew and each of them knew at the time of the said pretended sale and transfer, and of the payment of said sum of \$179,411.40 that said tract of land of 10,067.2 acres was worth and of the value of at least \$500,000.00 and that the development of oil near or adjoining said lands made them prospectively worth at least one million of dollars or more; that said pretended sale and transfer was a fraud upon your orator and contrary to and in violation of said decree in said action No. 4424; that the defendants in this action wrongfully and unlawfully claim and assert that the said pretended deed and conveyance of May 26th, 1908, transferred and vested in said Teresa Bell, as such administratrix, the title of, in and to said tract of land consisting of 10,067.2 acres, including any and all rights, title and interest of said U. S. Oil & Land Company, the complainant in this action; that said claim so made as aforesaid by said defendants as to said pretended deed and conveyance of May 26th, 1908, is without merit, wrongful and unlawful, contrary to and in conflict with said judgment in the said action No. 4424, and a fraud upon this complainant, and was and is made

with the wrongful, fraudulent and unlawful intents, purposes and designs aforesaid and of defrauding the said U. S. Oil & Land Company and its successors and grantees out of its interest in and title to an undivided one-half of the said 10,067.2 acres of land; that said 10,067.2 acres of land has never been advertised for sale by said Mercantile Trust Company of San Francisco as required in and by said decree in said action No. 4424 or otherwise or at all; that said pretended deed and conveyance and the pretended sale and transfer of said tract of 10,067.2 acres of land to said Teresa Bell as administratrix, etc. by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union has never been reported or submitted to or approved or confined by said Superior Court of Santa Barbara County; that said Mercantile Trust Company of San Francisco has wholly failed and neglected to perform its duties as trustee under said decree in said action No. 4424 and has, as hereinabove alleged, attempted to transfer and dispose of said trust property, the said tract of 10,067.2 acres of land, contrary to and in violation of the trust declared and set forth in said decree in said action No. 4424, and with the wrongful, unlawful and fraudulent intents, objects, purposes and designs aforesaid; that the said George Staacke had no personal interest or right or title in or to any of the proceeds of the sale of said tract of 10,067.2 acres of land adjudged to be made under and in pursuance of said decree in said action No. 4424, and his heirs, assigns and executor have no other different or greater right, title or interest in or to any such proceeds than said George Staacke had under said decree; that said George Staacke had no other right, title or interest whatever in or to said lands or to any of the proceeds of the sale of said lands under said decree than that of trustee for the benefit of the U. S. Oil & Land Company, its successors and assigns;

That on or about the 3rd day of March, 1911, the San Luis Land and Improvement Company, a corporation, for a valuable consideration sold, granted, trans-

ferred and conveyed in fee simple to the complainant, the U. S. Oil & Land Company, by a good and sufficient deed and conveyance an undivided one-half of said 10,067.2 acres and tract of land hereinabove described, and said deed was thereafter and on the Fifth day of March, 1911 duly filed for record and recorded in the office of the County Recorder in said County of Santa Barbara in Book of Deeds No. 131 on pages 109 to 110 thereof; that said John S. Bell on the 22nd day of December, 1896 for a valuable consideration granted, bargained, sold and conveyed to Catherine M. Bell, his wife, one of the defendants above named, said tract or piece of land of 10,067.2 acres, in fee simple absolute, and made, executed and delivered to her a good and sufficient grant, bargained and sale deed granting, transferring and conveying for a valuable consideration to said Catherine M. Bell, known also as Kate M. Bell, said 10,067.2 acres and tract of land; that said deed of John S. Bell to Catherine M. Bell was dated the 22nd day of December 1896 and was recorded in the office of the County Recorder of Santa Barbara County on the 18th day of June 1897 in Book 59 of Deeds at page 579; that said John S. Bell and Catherine M. Bell did on the 12th day of June 1897 for a valuable consideration grant, bargain, sell and convey in fee simple absolute to James L. Crittenden and Sidney M. Van Wyck, Jr. an undivided one-half of said tract or piece of land consisting of 10,067.2 acres of land, and did make, execute, acknowledge and deliver to said James L. Crittenden and Sidney M. Van Wyck, Jr. a good and sufficient grant, bargain and sale deed and conveyance wherein and whereby they, said John S. Bell and Catherine M. Bell, did grant, bargain and sell and convey for a valuable consideration to said James L. Crittenden and Sidney M. Van Wyck, Jr. and to their heirs and assigns an undivided one-half of said tract or piece of land of 10,067.2 acres; that said deed from said John S. Bell and Kate M. Bell to said James L. Crittenden and Sidney M. Van Wyck, Jr. was dated the 12th day of June 1897 and

was duly recorded in the office of the County Recorder of Santa Barbara County, State of California on the 18th day of June 1897 in Book 59 of Deeds at page 582; that on the 7th day of March 1899 for a valuable consideration by a good and sufficient grant, bargain and sale deed and conveyance said Sidney M. Van Wyck, Jr. granted, bargained sold and conveyed in fee simple to said James L. Crittenden and to his heirs and assigns forever all his right, title and interest of, in and to said tract or piece of land of 10,067.2 acres, and that said deed was dated March 7th 1899 and recorded in said Recorder's Office in Santa Barbara County on the 26th day of November 1900 in Book 75 of Deeds at page 223; that the said deeds and conveyances so executed and recorded as aforesaid, by said John S. Bell and Catherine M. Bell, Sidney M. Van Wyck, Jr., James L. Crittenden and Nina D. Crittenden, U. S. Oil & Land Company, and San Luis Land and Improvement Company, each granted and conveyed an undivided one-half of all of that certain tract, piece and parcel of land consisting of 10,067.2 acres described hereinabove in Paragraph numbered 1st of this bill of complaint with the exception of the lots, pieces and parcels mentioned in said paragraph 1st as excepted from the 10,067.2 acres tract described therein;

12th. Your orator, further complaining, shows avers and alleges upon information and belief that the Associated Oil Company, defendant herein, is a corporation duly organized and existing under the laws of the State of California with its principal place of business in said State of California; that the Associated Transportation Company, defendant herein, is a corporation duly organized and existing under the laws of the State of California with its principal place of business in said State of California; that the Union Oil Company of California, defendant herein, is a corporation duly organized and existing under the laws of the State of California with its principal place of business in said State of California; that each and every one of the defendants mentioned in the title

of this bill and complaint is a citizen and resident of the State of California; that your orator, U. S. Oil & Land Company, is a citizen of the State of Arizona; that Teresa Bell, Thomas Frederick Bell, Bessie M. Bell, known also as Elizabeth M. Bell, W. E. Bell known also as Eustace Bell, Reginald Bell, T. M. Bell, Muriel Bell also known as Muriel Margaret Bell, Robina Bell, Katherine M. Bell known also as Kate M. Bell, Marie T. Holman formerly Marie T. Bell, Arthur S. Holman husband of Marie T. Holman, Henry G. Meyer, Josephine M. Holbrook, John Lewellyn Auxerais, Daniel A. McColgan, Peter J. Crosby, Robina Vellguth, George Henry Howard, O. H. Harshbarger, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, C. H. Williams, Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, J. Doherty, Henry N. Evans, J. S. Evans, Joseph Smith, Joseph Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, R. McColgan, Reginald McColgan, Clarence Vellguth, M. Dominguez, W. P. Hammon, F. C. Van Deinse, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Savings Union Bank and Trust Company, Union Oil Company of California, The Associated Oil Company, The Associated Transportation Company, Rauers Law and Collection Company, John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Mary Roe, Richard Roe, Henry Roe and Kate Roe, defendants, are citizens and residents of the State of California, and that each of said defendants is a citizen and resident of said State of California; that the name of said San Francisco Savings Union has been changed to Savings Union Bank and Trust Company by and under a judgment of the Superior Court of the State of California in and for the City and County of San Francisco duly made, rendered and entered in a proceeding duly commenced and prosecuted by said San Francisco Savings Union and the directors thereof and that a certified copy of said judgment changing the name of said San Francisco Savings Union as

aforesaid has been duly filed with the Secretary of State of the State of California;

13th. Your orator further complaining, shows, avers and alleges that the true names of the defendants designated in the title to this complaint as John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Richard Roe, Henry Roe, Kate Roe and Mary Roe are unknown to the complainant and said persons are therefore designated and sued by said fictitious names in order that they may be brought in as defendants when their names are discovered;

14th. Your orator further complaining, shows, avers, and alleges upon information and belief that said George Henry Howard has made, executed and delivered to O. H. Harsbarger a pretended deed and conveyance purporting to transfer and convey all the right, title and interest of said George Henry Howard in and to said tract, piece and parcel of land of 10,067.2 acres; that said George Henry Howard and O. H. Harsbarger had notice and knowledge at the time of and before said pretended deed and conveyance was made by said Howard to said Harsbarger of the title of complainant to an undivided one-half of said 10,067.2 acres and tract of land and of each and all of the following facts and matters, to-wit: That said tract, piece or parcel of land of 10,067.2 acres had been and was deeded and conveyed by Dwight W. Grover and Samuel Rosener on or about the 7th day of March, 1889, in trust for the benefit of John S. Bell the then owner thereof, and that said Grover and Rosener had on and prior to March 7th, 1889, agreed to reconvey said tract of land to said John S. Bell, and that said George Staacke paid no consideration whatever for said tract, piece or parcel of land of 10,067.2 acres of land or for any part or portion thereof or for said deed and conveyance so as aforesaid executed to him by said Grover and Rosener, and that said George Staacke received and accepted said deed and conveyance and held the title to said 10,067.2

acres of land as such trustee, and not otherwise, from the time he received the same to the time of his death, and that the decrees hereinabove in this complaint mentioned had been made and entered by said Superior Court of Santa Barbara County; that said pretended deed and conveyance so made by said Howard to said Harshbarger was made with the fraudulent and unlawful intent, object, purpose and design to defeat said trust upon which said land had been conveyed as aforesaid by said Grover and Rosener to said George Staacke and to deprive the plaintiff and the successors in interest of John S. Bell of the benefits of said trust and of their rights thereunder;

15th. Your orator further complaining, shows, avers and alleges upon information and belief that the matter in controversy in this suit exceeds, exclusive of interest and costs, the sum or value of Ten Thousand Dollars and that the real property involved in this suit exceeds in value the sum of One Million Dollars; that the matter in controversy in this suit is between citizens of different states, that is, between the complainant, a citizen of the State of Arizona, and the defendants, who are citizens of the State of California, that each and all of the defendants had notice of said judgments and decrees, and of said findings hereinabove mentioned and set forth, and also of the right, title and interest of the complainant of, in and to an undivided one-half of said tract and piece of land consisting of 10,067.2 acres of land, and had such notice before said defendants or any of them entered upon said tract of land or paid any money or consideration for any right or interest therein or thereto; that the defendants W. P. Hammon and F. C. Van Deinse, did on or about the 1st day of June 1911 wrongfully and unlawfully enter upon a portion of said lands and bore or cause to be bored a well for the purpose of extracting oil from said land with the wrongful and unlawful intent, object, purpose and design to appropriate to their own use or to the use of one of them any and all oil obtained or extracted from said lands to the great and irreparable loss, damage and injury of

the complainant; that said defendants W. P. Hammon and F. C. Van Deinse threaten and are about to bore or cause to be bored other wells with the wrongful and unlawful intent, object, purpose and design of extracting oil from said land and appropriating all oils extracted therefrom to the use of one or both of them and will, unless restrained and enjoined by this honorable court, extract large quantities of oil from said lands, sell the same, and appropriate the proceeds thereof to the use of one or both of said defendants and thereby greatly depreciate the value of said land and greatly and irreparably injure and damage the complainant and the rights, interest and title of complainant in and to said lands; that said Teresa Bell as such administratrix and claiming and asserting wrongfully and unlawfully to have acquired the title in fee to said 10,067.2 acres of land by and under said deed dated May 26th 1908 so as aforesaid made and executed by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union has collected large sums of money as rents from the tenants on said tract of land aggregating about \$10,000 to which rents the complainant was and is entitled as the owner in fee of an undivided one-half of said tract of 10,067.2 acres of land; that the said Teresa Bell as such administratrix threatens to collect and appropriate to her own use as such administratrix all the rents, income and profits of said tract of 10,067.2 acres of land and will carry out said threats and collect and appropriate all of said rents, income and profits to her own use as such administratrix to the great and irreparable loss, injury and damage of the complainant unless restrained and enjoined by this honorable court and by an injunction issuing in this suit out of the court commanding her as such administratrix to desist and refrain from collecting the same or the one-half thereof to which the complainant is entitled;

That on or about the 20th day of May 1908 the said Teresa Bell, Mercantile Trust Company of San Francisco and said San Francisco Savings Union combined

and conspired together and made and entered into a secret combination and conspiracy to evade and defeat the said decree in said action No. 4424, and to deprive said U. S. Oil & Land Company of its right, title and interest in and to an undivided one-half of said tract of land consisting of 10,067.2 acres and of its interest in and right to the proceeds and every part of the proceeds that might be obtained by and from a sale of said tract of 10,067.2 acres, and did in pursuance of said combination and conspiracy and with the wrongful, unlawful and fraudulent intent, object, purpose and design of evading and defeating said decree in said action No. 4424 and of depriving said U. S. Oil & Land Company of its right, title and interest in and to an undivided one-half of said tract of land and of any proceeds that might be obtained from a sale thereof under said decree in said action No. 4424, have and cause said deed dated May 26th 1908 to be made and executed and thereafter recorded as shown, avered and allged hereinabove in paragraph No. 11th of this bill; and that said deed dated May 26th 1908 was so as aforesaid made, executed and delivered by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union under and in pursuance and execution of said wrongful and unlawful combination and conspiracy.

That said C. A. Hunt, one of the defendants above named, is County Clerk of said County of Santa Barbara and Clerk of said Superior Court of said County of Santa Barbara, and has in his possession and under his control the deed and conveyance made and executed by said George Staacke to Catherine M. Bell and James L. Crittenden and delivered to said Hunt as hereinabove alleged on the 8th day of July 1901.

16th. In cosideration whereof and inasmuch as your orator has no sufficient or adequate remedy at law for the wrongs, done or threatened to be done and hereinabove set forth, and inasmuch as any remedy at law will afford no protection to your orator against the same or against the sinking of wells and the extraction of the oil from said land by said W. P. Ham-

mon and F. C. Van Deinse or by other persons acting under them or under their direction and for as much as your orator is only relievable in a court of equity where matters of this kind are properly cognizable and relievable, and to the end therefore, that your orator may have and obtain the relief to which it is justly entitled in the premises, and that the defendants and each of them may, if they and each of them can, show why your orator should not have the relief prayed for, and may make a full disclosure and discovery of all of the matters aforesaid, and, according to the best and utmost of their and each of their remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinabove stated, your orator prays:

First: That it may please your Honors to grant unto your orator a Writ of Subpoena of the United States of America directed to the said Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, with the will annexed, Thomas Frederick Bell, Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell, W. E. Bell, also known as Eustace Bell, Reginald Bell, Teresa Bell, T. M. Bell, Elizabeth M. Bell, Muriel Bell, also known as Muriel Margaret Bell, Robina Bell, Catherine M. Bell, also known as Kate M. Bell, Marie T. Holman, formerly Marie T. Bell, Arthur S. Holman, husband of Marie T. Holman, Henry G. Meyer, Josephine M. Holbrook, John Lewellyn Auzerai, Daniel A. McColgan, Peter J. Crosby, Robina Vellguth, George Henry Howard, O. H. Harshbarger, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, C. H. Williams, Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, Henry N. Evans, J. S. Evans, J. Doherty, Joseph Smith, Jose Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, R. McColgan, Reginald McColgan, Clarence Vellguth, W. P. Hammon, F. C. Van Deinse, George Henry Howard as executor of the last will and testament of George Staacke, deceased, Union Oil Company of California, a corporation, Mercantile Trust

Company of San Francisco, a corporation, San Francisco Savings Union, a corporation, Savings Union Bank and Trust Company, a corporation, The Associated Oil Company, a corporation, The Associated Transportation Company, a corporation, Rauer Law and Collection Company, a corporation, Rauer's Law and Collection Company, a corporation, John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Mary Roe, Richard Roe, Henry Roe and Kate Roe, and to such other persons as shall in the discretion of your Honors appear and answer to the hearing and determination of this cause, commanding them and each of them on a day certain to appear and answer under oath to this bill of complaint and to each and all of the matters and allegations therein stated, and to abide and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and of good conscience.

Second: That said defendants and each of them be required to set forth any and every adverse interest, claim, or demand in or to said tract, piece and parcel of land consisting of 10,067.2 acres in this bill of complaint mentioned and described, to the end that the same may be justly adjudicated, and declared null and void as against your orator, and that the title and ownership of your orator in and to an undivided one-half of said tract, piece and parcel of land and other property in this bill of complaint described be established and confirmed and quieted as against any and all claims of said defendants and of each and every of them, and all clouds on the said tract, piece and parcel of land and other property forever removed.

Third: That your Honors grant unto your orator your writ of injunction and that such injunction be issued out of and under the seal of this Honorable Court commanding the said W. P. Hammon and F. C. Van Deinse, defendants above named, and each and every one of them, their servants, agents, attorneys, employes, and workmen, and any and all persons under the authority, direction or control of said defendants

W. P. Hammon and F. C. Van Deinse, or of any of them to absolutely desist and refrain from sinking or boring any well or wells for oil in or upon any part or portion of said 10,067.2 acres of land or upon or in the tract, piece and parcel of land hereinabove in this complaint mentioned and described and from extracting, taking or removing any oil out of or from said land or out of or from any well or wells on or in said tract of land, until such time as your Honors shall direct and appoint a hearing herein;

Fourth: That said defendants W. P. Hammon and F. C. Van Deinse, and each of them, be restrained from the commission of any of the acts or doings hereby sought to be enjoined, and that upon such hearing the writ herein prayed for pending this suit be made and confirmed until the final determination of this suit, and that thereupon said injunction be made perpetual;

Fifth: That upon the hearing of this suit and an adjudication, your orator be quieted and confirmed in its title to an undivided one-half of said tract, piece and parcel of land hereinabove and in said decree in said action No. 4424 described, consisting of 10,067.2 acres, and that it be adjudged and decreed that said defendants have not and each of said defendants has not any estate, right, title or interest of, in or to said undivided one-half of said tract, piece and parcel of land of 10,067.2 acres of which complainant is owner in fee;

Sixth: That said defendants and each and all of them be forever debarred, enjoined and restrained from asserting and also from maintaining any claim, right, title or interest whatever in or to said undivided one-half of said 10,067.2 acres of land, of which the complainant is owner in fee, or of, in or to any part or portion thereof adverse to the complainant;

Seventh. That it be adjudged and decreed that said pretended deed and conveyance of May 26th, 1908, is a fraud upon the right, title and interest of the complainant in and to an undivided one-half of said tract, piece or parcel of land of 10,067.2 acres, and was made and executed contrary to and in violation of said decree in said action No. 4424, and with the fraudulent

and wrongful intent, object, purpose and design of depriving the complainant of its right, title and interest in and to the undivided one-half of said tract of land consisting of 10,067.2 acres of land and of obtaining an unfair and unconscionable advantage over the complainant;

Eighth: That it be adjudged and decreed that the said Teresa Bell as administratrix with the will annexed of the Estate of Thomas Bell, deceased, make, execute and deliver to the complainant a good and sufficient deed and conveyance in fee simple of an undivided one-half of said tract, piece or parcel of land of 10,067.2 acres;

Ninth: That it be adjudged and decreed that the Clerk of said Superior Court of Santa Barbara County deliver to the County Recorder of the said County of Santa Barbara the said deed of November 21st 1901, made and executed by said George Staacke to Catherine M. Bell and James L. Crittenden, to be by said Recorder recorded in the records of the said County of Santa Barbara;

Tenth: That it be adjudged and decreed that the said Mercantile Trust Company of San Francisco make, execute and deliver to the complainant a good and sufficient deed and conveyance, transferring and conveying in fee simple an undivided one-half of said tract, piece or parcel of land of 10,067.2 acres;

Eleventh: That it be ordered, adjudged and decreed that the defendants George Henry Howard, O. H. Harshbarger and George Henry Howard as executor of the last will and testament of George Staacke, deceased and each of them make, execute and deliver to the complainant a good and sufficient deed and conveyance in fee simple of an undivided one-half of said tract, piece or parcel of land of 10,067.2 acres;

Twelfth: That it be adjudged and decreed that the transfer and conveyance made by said George Henry Howard to said O. H. Harshbarger hereinabove in this complaint mentioned was wrongful, unlawful and fraudulent, was made with the fraudulent intent, object, purpose and design of depriving the complainant

of its right, title and interest in and to said undivided one-half of said 10,067.2 acres and to defeat the trust under which said George Staacke received and held the title to said tract, piece and parcel of land of 10,067.2 acres, and was made and executed by said George Henry Howard and was received by said O. H. Harsbarger with notice and knowledge of the trust under which said George Staacke received and held the title to said 10,067.2 acres of land;

Thirteenth: That a receiver be appointed by this honorable court in accordance with the practice of courts of Equity with full power and authority to take and hold possession of said tract, piece or parcel of land hereinabove in this complaint described and to collect and receive during the pendency of this suit or until such time as your honors shall direct and appoint a hearing herein all rents, issues, and profits of or arising from the same;

Fourteenth: That your orator may have such other further, different and additional relief, preliminary or final, as to this Honorable Court may seem meet and proper and which equity may require, and also judgment for the costs of your orator in this suit incurred.

March 2, 1912.

James L. Crittenden
and Richards & Carrier,
Solicitor for Complainant.

Barclay Henley

Of Counsel for Complainant.

The United States of America, State of California,
City and County of San Francisco—ss.

On this twenty-seventh day of February, A. D., 1912, before me personally appeared Alfred D. Crittenden, the Secretary and an officer of the U. S. Oil & Land Company, the above named complainant, and made solemn oath that he has read the foregoing Bill of Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters, he believes it to be

true; and that this verification is not made by the complainant because complainant is a corporation and is made by deponent because he is the Secretary and an officer of said corporation.

Alfred D. Crittenden.

Subscribed and sworn to before me this 27th day of February, 1912, at and in said City and County of San Francisco.

Flora Hall.

(Seal)

(Endorsed.) Filed Mar 2, 1912, Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

United States of America,
District Court of the United States, Southern District
of California, Southern Division.

In Equity.

The President of the United States of America, Greeting:

To Catherine M. Bell, also known as Kate M. Bell; Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, Henry N. Evans, J. Doherty, J. S. Evans, Joseph Smith, Jose Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, C. A. Hunt and Union Oil Company of California, a corporation:

You are hereby commanded that you be and appear in said District Court of the United States aforesaid, at the court room in Los Angeles, California, on the 6th day of May, A. D. 1912, to answer a Bill of Complaint exhibited against you in said Court by the U. S. Oil & Land Company, a corporation formed and organized by and under the laws of the Territory of Arizona, and now a corporation existing by and under the laws of the State of Arizona, and a citizen of said State of Arizona,

and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

Witness, the Honorable Olin Wellborn, Judge of the

District Court of the United States, this 4th day of March, in the year of our Lord one thousand nine hundred and twelve and of our Independence the one hundred and thirty-sixth.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

Memorandum pursuant to Rule 12, Supreme Court, U. S.

You are hereby required, to enter your appearance in the above suit, on or before the first Monday of May, next, at the Clerk's Office of said Court pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

Clerk's Office: Los Angeles, California.

United States Marshal's Office, Southern District of California.

I hereby certify, that I received the within writ on the day of 19 , and personally served the same on the day of 19 , on

by delivering to and leaving with said defendant named therein, personally, at the County of in said district, a copy thereof.

Returned unexecuted

Leo V. Youngworth, U. S. Marshal.

Los Angeles,

By E. Dingle, Deputy.

May 29, 1912.

(Endorsed) Original Marshal's Civil Docket No. 1871. No. 140 Civil. U. S. District Court Southern District of California, Southern Division. In Equity. U. S. Oil & Land Company, vs. Teresa Bell, as Administratrix, etc., et al. Subpoena. Filed May 29, 1912, Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk.

James L. Crittenden, S. F., Richards & Carrier, Santa Barbara, Solicitors for complaint.

United States of America, District Court of the United States, Southern District of California, Southern Division. In Equity.

The President of the United States of America, Greeting:

To Catherine M. Bell, John S. Bell, the Union Oil Company of California and C. A. Hunt.

You are hereby commanded, That you be and appear in said District Court of the United States aforesaid, at the Court Room in Los Angeles, California, on the 1st day of July, A. D., 1912, to answer a Bill of Complaint exhibited against you in said Court by the U. S. Oil & Land Company, a corporation formed and organized by and under the laws of the Territory of Arizona, and now a corporation, existing by and under the laws of the State of Arizona, and a citizen of said State of Arizona,-----
and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

Witness, The Honorable Olin Wellborn, Judge of the District Court of the United States, this 29th day of May, in the year of our Lord one thousand and nine hundred and twelve, and of our Independence the one hundred and thirty-sixth.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

(Seal)

Memorandum pursuant to Rule 12, Supreme Court, U. S.

You are hereby required, to enter your appearance in the above suit, on or before the first Monday of July next, at the Clerk's Office of said Court pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

Clerk's Office: Los Angeles, California.

United States Marshal's Office, Southern District of

California.

I hereby certify, that I received the within writ on the 31st day of May, 1912, and personally served the same on the 11th day of June, 1912, on U. S. Oil & Land Co. by delivering to and leaving with W. L. Stewart, VP. U. S. Oil & Land Co., said defendant named therein, personally, at the County of Los Angeles, in said district, a copy thereof. Leo V. Youngworth, U. S. Marshal, By E. Dingle, Deputy. Los Angeles, June 11, 1912.

(Endorsed) Original. Marshal's Civil Docket No. 140 Civil. U. S. District Court, Southern District of California, Southern Division. In equity. U. S. Oil & Land Company, a corporation, vs. Teresa Bell, Administratrix, etc., et al. Alias Subpoena. Filed June 27, 1913, Wm. M. Van Dyke, Clerk, By Chas. N. Williams, Deputy Clerk. Richards & Carrier.

(TITLE OF COURT AND CAUSE.)

Joint And Several Demurrer Of Certain Defendants To
Complainant's Bill Of Complaint.

Now come the defendants Teresa Bell, as the Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell, by protestation, and not confessing or acknowledging all or any of the matters or things in the bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, Do Hereby Demur to said bill of complaint and for cause of demurrer, allege the following:

I. That it appears by the complainant's own showing by the said bill of complaint that it is not entitled to the relief prayed by the bill against these defendants, or against any of the defendants.

II. That it appears from the complainant's bill of complaint that each and all of the grounds therein alleged, and upon which relief is sought, are stale, and that the same should not be entertained by a Court of Equity at this time.

Wherefore these defendants, and each of them, pray that the bill of complaint be dismissed.

T. Z. Blakeman,

Solicitor for the Defendants Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell.

I Hereby Certify that the foregoing Demurrer is, in my opinion, well founded in point of law.

T. Z. Blakeman,

Solicitor for the said Defendants.

Northern District of California, City and County of San Francisco, ss.

Teresa Bell being duly sworn deposes and says that she is one of the defendants in the above entitled action, that she has heard read the foregoing demurrer and she solemnly swears that it is not interposed for delay and that the same is true in point of law.

Teresa Bell.

Subscribed and sworn to before me this 31st day of May, 1912.

(Seal)

Edith W. Burnham.

Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed) Filed June 3, 1912. William Van Dyke, Clerk.

By Charles N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Joint And Several Answer Of Certain Defendants To

Complainant's Bill Of Complaint.

Now come the defendants Teresa Bell, as the Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, and Teresa Bell, and, answering the bill of the complainant herein, jointly and severally deny, state, and allege as follows:

I. They, the said defendants, and each thereof, here answering, deny, upon information and belief, that the complainant, the U. S. Oil & Land Company, was a corporation formed and organized by and under the laws of the Territory of Arizona, or that the U. S. Oil & Land Company is a corporation existing by and under the laws of the State of Arizona, or is a corporation, or that the said U. S. Oil & Land Company is a citizen of the State of Arizona, or that the said U. S. Oil and Land Company was organized as, or ever became, a corporation under or by the laws of the Territory of Arizona, or that the said U. S. Oil & Land Company ever became or was or is a corporation existing by or under the provisions of the Constitution or laws of the State of Arizona.

II. These defendants and each of them deny that the complainant is the owner in fee simple absolute, or otherwise, of an undivided one-half, or of any portion, of that certain tract, piece and parcel of land lying and being in the County of Santa Barbara, State of California, consisting of 10,067.2 acres, being the tract, piece and parcel of land bounded and particularly described in the complainant's bill of complaint, at pages 4 to 7, inclusive, thereof.

III. These defendants, and each of them, deny that George Staacke ceased to be Executor of the Estate of

Thomas Bell, deceased, on the 4th day of May, 1900; but these defendants, and each of them, state and allege that, on the 23rd day of March, 1900, the Superior Court of the State of California, in and for the City and County of San Francisco, having charge and jurisdiction in the settlement of the Estate of Thomas Bell, deceased, duly made and entered its Order in the matter of the said Estate, suspending the powers of the said George Staacke as the sole remaining Executor of the will of the said decedent, Thomas Bell, and appointing Teresa Bell, one of the defendants herein, as Special Administratrix of the Estate of the said Thomas Bell, deceased; that the said Teresa Bell thereupon and on the 23rd day of March, 1900, duly qualified as such Special Administratrix, and Letters of Special Administration of the said Estate were duly issued to her under the seal of the said Court, and she thereupon, as such Special Administratrix, took possession of the assets, books records and papers of the said Estate, and thereafter continued and remained as Special Administratrix of the Estate of Thomas Bell, deceased, until she qualified, as hereinafter alleged, as the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed; that, on the 3rd day of May, 1900, after a trial had before the said Superior Court of the charges made against the said George Staacke as Executor, the said Superior Court made its Order revoking the Letters Testamentary theretofore issued to the said George Staacke as Executor of the will of the deceased Thomas Bell; that the said George Staacke appealed to the Supreme Court of the State of California from the said Order of the Superior Court revoking the said Letters Testamentary; that, on the 24th day of December, 1901, the judgment of the Supreme Court of the State of California was made in the matter of the said appeal by the said George Staacke, whereby the said Order revoking the said Letters Testamentary was affirmed; that, after the Order of the said Superior Court revoking the said Letters Testamentary issued to the said George Staacke had become final as aforesaid, the said Teresa

Bell, who was and is the widow of the said deceased Thomas Bell, petitioned the said Superior Court for General Letters of Administration upon the said Estate of Thomas Bell, deceased, with the Will annexed, and thereafter, to wit, on the 13th day of February, 1902, the said Superior Court duly made and entered its Order in the matter of the said Estate of Thomas Bell, deceased, whereby the said Teresa Bell was appointed Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed; that she thereafter, to wit, on the 19th day of February, 1902, duly qualified as such Administratrix, and Letters of Administration were, on the 19th day of February, 1902, issued to her under the seal of the said Court, as Administratrix of the said Estate with the Will annexed; that she, the said Teresa Bell, thereupon ceased to be Special Administratrix of the said Estate, and thereupon became, and ever since has been, Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed.

IV. These defendants, and each of them, admit that the defendants Teresa Bell, Thomas Frederick Bell, Bessie M. Bell, Eustace Bell, Reginald Bell, Muriel Bell, Robina Vellguth, Arthur S. Holman and Peter Crosby claim and assert an estate and interest in and to said tract of land, as the heirs and devisees, or as assignees of the heirs and devisees, of the said Thomas Bell, deceased; but they deny that any of the other of these defendants claim or assert, or has any estate or interest in said tract of land, or in any part or portion thereof, except that the defendants Alexander D. Keves, Thomas E. Palmer and Florence Adele Gibson claim an interest in said land as mortgagees of the defendant, Muriel Bell; except that the defendant Rauer's Law and Collection Company claims an interest in said land as the holder of a judgment against the defendant Thomas Frederick Bell, and the defendant Josephine M. Holbrook claims an interest as mortgagee of the defendants Thomas Frederick Bell and Bessie M. Bell, and except that W. P. Hammon and F. C. Van Deinse claim portions as grantees of the heirs of Thomas Bell, deceased.

These defendants, and each of them, deny that the claims of the defendants having interests as aforesaid in said land are without any right whatever, or that they and each of them have not any right, title or interest in or to said tract of land, or any part or portion thereof; and they deny that the claims made by those defendants hereinbefore alleged to have an interest in said land are wrongful and unlawful and without any right whatever, or are wrongful or unlawful or without any right; and they deny that said defendants hereinbefore alleged to have an interest in said land have not any right, title or estate or interest in or to the undivided one-half of the said tract, piece and parcel of land, or in or to any part or portion thereof.

V. These defendants, and each of them, deny that the judgment alleged in the bill of complaint to have been made and filed in the Superior Court of Santa Barbara County on the 29th day of June, 1901, in the action in said Superior Court entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as Executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," was in the words and figures alleged and set forth in said bill of complaint; but admit that a judgment of like purport was made by the said Superior Court and filed in said action on the 29th day of June, 1901.

VI. These defendants, answering that portion of Paragraph 8th which refers to the notice of appeal by George Staacke, individually, and Teresa Bell, as Special Administratrix of the Estate of Thomas Bell, deceased, to the Supreme Court of the State of California, allege that the said bill of complaint does not state correctly or fully the appeal taken or the action of the Supreme Court of the State of California in disposing of the said case; but these defendants, and each of them, allege that the said notice of appeal, dated as alleged on the 8th day of July, 1901, included a notice of appeal taken to the said Supreme Court from the Order of the said Superior Court made and entered on the 7th day of June, 1901, denying the motion of the said defendants

George Staacke, individually, and Teresa Bell, as Special Administratrix of the Estate of Thomas Bell, deceased, for a new trial of the said action; that the plaintiff in said action moved the said Supreme Court of the State of California to dismiss both of the appeals of the said defendants, to-wit, the appeal from the order denying a new trial and the appeal from the judgment; that the Supreme Court of the State of California granted the motion of the plaintiff to dismiss the appeal taken from the judgment, but denied the motion to dismiss the appeal from the Order refusing a new trial.

These defendants, and each of them, deny that the said judgment and decree of the said Superior Court upon the dismissal of the appeal from the judgment by said Supreme Court thereby became and was affirmed, and they deny that the said judgment and decree ever since has been, or remains, or still is in full force, or in or of any force or effect whatever; and they deny that said judgment and decree was or is a final adjudication of the rights or interests of the parties to the said action in which it was rendered.

And these defendants, and each of them, further answering in respect to said judgment and decree, allege that the said appeal by the said defendants from the said Order denying their motion for a new trial, after the dismissal as aforesaid of the appeal from the judgment, came on for hearing and was heard by the said Supreme Court of the State of California, and the said Supreme Court of the State of California, on the 28th day of December, 1903, made and entered its Order and judgment whereby the Order of the said Superior Court denying the said defendants' motion for a new trial of the said action was reversed and a new trial of said action ordered; "except as to the issues covered by the 23rd Paragraph of the Findings and the following portion of the 22nd Paragraph of the Findings, to wit: 'That John S. Bell was indebted to Thomas Bell, on the 16th day of October, 1892, the day that Thomas Bell died, on account of advances of money and interest thereon in the sum of \$52,120.15', and Paragraph '4'

of the Conclusions of Law, and except as to the issues covered by the 'Additional Findings'"; that is to say, the Supreme Court, by its judgment aforesaid ordered a new trial of all the issues made by the pleadings in the said action of John S. Bell vs. George Staacke et al., except the issues relating to the indebtedness of the said John S. Bell to Thomas Bell at the date of the death of Thomas Bell. That the new trial of the said action ordered by the Supreme Court as aforesaid was had in the said Superior Court, April 19th to May 22nd, 1904, and the plaintiff therein, the said John S. Bell, and James L. Crittenden, the grantee of John S. Bell, and the grantor of the complainant U. S. Oil & Land Company, appeared and participated in the re-trial of the said action; that thereafter all of the issues in the said action, as to which a new trial was ordered as aforesaid, were, by the respective parties to the said action, submitted to the said Superior Court for decision, and thereafter, to wit, on the 17th day of October, 1904, the said Superior Court made and filed its decision, wherein it was decided that a lien existed upon the tract of land described in the complaint in said action, being the same tract of land described in the bill of complaint herein, of which the complainant herein claims an undivided one-half, in favor of the said defendant Teresa Bell as the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, for the payment to her, as such Administratrix, under the allegations in the cross-complaint of the defendants in said action, in the sum of \$95,901.07 and accruing interest, and that the said Administratrix was entitled to a judgment foreclosing said lien and directing sale to be made of said tract of land to pay the cost and expenses of said sale and the amount aforesaid of said lien; that the judgment of the said Superior Court, according to the said decision, was duly entered in said action, on the 28th day of October, 1904, to wit, judgment that there was due and owing from John S. Bell to the defendant Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, the sum of

\$95,901.07, and that the said sum and the costs of the said defendant, taxed at \$608.50, was a valid lien upon the tract of land described in the complaint and cross-complaint in said action, and in the bill of complaint of the complainant herein; and that the defendant George Staacke held the legal title to said land, in trust, first as security for the payment of the aforesaid sum of \$95,901.07 and said costs; and, second, in trust for the use and benefit of said John S. Bell; that all of said land be sold by the Commissioner appointed therein at public auction, in the manner prescribed by law, and that said Commissioner, after the time for redemption had expired, execute a deed to the purchaser of said land; that Jesse L. Hurlbut be and was appointed Commissioner of said Court to make said sale, and that said Commissioner pay out the proceeds of said sale, retaining his fees and disbursements, to said Teresa Bell as such Administratrix the said costs and the said sum of \$95,901.07 and accruing interest, and that the plaintiff, and all persons claiming under him, be forever barred and foreclosed of and from all equity of redemption in and to said land, from and after the delivery of said Commissioner's deed, and that the purchaser of said land at said Commissioner's sale be let into possession thereof, and that, if the moneys arising from said sale be insufficient to pay the amount found due to said Administratrix, judgment for such deficiency be docketed against the plaintiff, John S. Bell. That the said judgment described the lands to be sold, and they are the same as are described in the bill of complaint in this section, in which the complainant claims an undivided one-half.

These defendants, and each of them, further allege that an appeal to the Supreme Court of the State of California was duly taken and prosecuted from the said judgment of the Superior Court made and entered as aforesaid on the 17th day of October, 1904, by the plaintiff therein, John S. Bell, and by his grantees, James L. Crittenden and Kate M. Bell, and that thereafter the said Supreme Court, on the 2nd day of January, 1906, made and entered its Order and judgment whereby the said

appeal from the said judgment was dismissed. That the plaintiff, John S. Bell, in the said action, and his grantees, James L. Crittenden and Kate M. Bell, who were, as alleged in the complainant's bill of complaint herein, allowed to prosecute the said action of John S. Bell vs. George Staacke et al., in the name of the plaintiff, made a motion for a new trial of the said action, which resulted as aforesaid in the judgment entered as aforesaid on the 17th day of October, 1904, and said motion for a new trial was, by said Superior Court, denied, and an appeal from said Order denying a new trial as aforesaid was duly taken by and in the name of the said plaintiff, John S. Bell, to the Supreme Court of the State of California; that the said Supreme Court, on the 22nd day of July, 1907, made and entered its Order whereby the said appeal from the said Order of the Superior Court, denying said motion for a new trial, was affirmed.

VII. These defendants, and each of them, deny that the Additional Findings and Conclusions of Law made and filed by the Judge of the said Superior Court on the 7th day of June, 1901, in the said action entitled "John S. Bell vs. George Staacke et al." were made or filed upon or at a special instance and request of the Attorneys of and for the defendants in said action; but allege that said Additional Findings and Conclusions of Law were, as therein stated, made by the said Court of its own motion.

VIII. These defendants, and each of them, further answering, state that it is and has been since and prior to the first day of January, 1900, the law of the State of California, when a judgment of the Superior Court of the said State has been duly made and entered in an action pending therein against the plaintiff or defendant, and the losing party has appealed to the Supreme Court of the said State from the judgment, and has moved in the said Superior Court for a new trial of the action and the motion for a new trial has been denied by the said Superior Court, and an appeal from the Order denying a new trial has been taken by the said losing

party to the Supreme Court of the said State, and the appeal from the judgment has been dismissed or affirmed by the said Supreme Court, and thereafter the said Supreme Court has considered the said appeal from the Order denying a new trial and has made its judgment reversing the Order denying a new trial and ordering a new trial, the effect of the said judgment of the Supreme Court reversing the Order denying a new trial and ordering a new trial of the action is to vacate and set aside the said judgment, and that, thereupon, the action remains pending in said Superior Court for the re-trial, to all intents and purposes as if no previous trial had been had or prior judgment entered.

IX. These defendants, and each of them, deny that the time to serve and file any notice of intention to move for a new trial in the said action entitled "John S. Bell vs. George Staacke et al." after the decision therein made by the said Superior Court on the 6th day of March, 1901, expired on or about the 17th day of June, 1901; but these defendants, and each of them, allege that notice of intention to move for a new trial in said action, after the said decision of the said Court made on the 6th day of March, 1901, was duly made, served and filed thereafter, within ten days, by the defendants in said action, after service of notice upon them of the making and filing of the said decision. And these defendants, and each of them, deny that the Findings of Fact and Conclusions of Law, and the decision of the said Superior Court in said action of John S. Bell vs. George Staacke et al., became, on the 9th day of July, 1901, or ever since have been, final, conclusive and binding, or final or conclusive or binding upon all the parties to the said action, or upon their successors in interest, or upon each or all or any of the heirs of said Thomas Bell, deceased; and they, and each of them, deny that the jurisdiction and power of the said Superior Court to hear or grant any motion for a new trial in said action was then terminated forever or ceased to exist; and they, and each of them, deny that the said Superior Court, or the Supreme Court of the State of California,

or any Appellate Court of the said State, ceased to have any jurisdiction to entertain or hear or pass upon or review any notice of intention to move for a new trial, or any motion for a new trial in said action, or any Order made on any such notice or motion, or to modify, alter or change, in any way or manner or respect, said judgment of said Superior Court. These defendants, and each of them, deny that the Order and judgment of the Supreme Court, made on the 16th day of September, 1902, by which the appeal taken by the defendants in the said action entitled "John S. Bell vs. George Staacke et al.", was dismissed, has never been modified, vacated or set aside; but these defendants, and each of them, state and allege that the judgment of the said Supreme Court thereafter made on the appeal of the said defendants from the Order of the Superior Court denying their motion for a new trial, by which the Order of the said Superior Court denying a new trial was reversed and a new trial in said action ordered, did, in its effect, vacate, set aside and render of no effect the judgment of the said Superior Court theretofore entered.

X. These defendants, and each of them, deny that the said George Staacke ever made or executed to James L. Crittenden and Catherine M. Bell, or delivered, on the 9th day of July, 1901, or at any other time, to C. A. Hunt as County Clerk of the said County of Santa Barbara, or as Clerk of said Superior Court, any deed of conveyance under or in accordance with the judgment and decree made and filed in said action of John S. Bell vs. George Staacke et al., on the 29th day of June, 1901, whereby said George Staacke granted and conveyed and transferred to the said James Crittenden, in fee simple or otherwise, an undivided one-half of all said tract of land containing 10,067.2 acres; but these defendants, and each of them, allege that, when the defendants in the said action of John S. Bell vs. George Staacke et al. appealed to the Supreme Court from the judgment therein made and filed on the 29th day of June, 1901, and from the Order of the said Superior Court denying the motion of the defendants for a new trial, they were re-

quired, under and by the laws of the State of California, in order to obtain a stay of execution of that part of the judgment from which they had appealed as aforesaid, to make and deposit with the Clerk the deed of conveyance required by the said judgment and decree to be executed, and a deed of conveyance such as the said judgment required to be made and executed by the said George Staacke to the said James L. Crittenden and Catherine M. Bell was, by the said defendants so appealing, procured to be made, and was made and duly acknowledged by the said George Staacke and delivered to the said C. A. Hunt as the Clerk of the said Superior Court, for the purpose of complying with the requirement of the law as aforesaid, in order to obtain a stay of the execution of the said judgment from which the appeal as aforesaid was taken. And these defendants, and each of them, deny that the said deed of conveyance, made and acknowledged as aforesaid, was delivered to the said C. A. Hunt, as such Clerk, for James L. Crittenden or Catherine M. Bell, or for the benefit of them or either of them; and these defendants, and each of them, deny that the said deed of conveyance was an absolute grant, deed, transfer and conveyance of the title in fee of, in and to said tract, piece and parcel of land of 10, 067.2 acres to said James L. Crittenden and Catherine M. Bell; and these defendants, and each of them, deny that the said deed of conveyance vested unto said James L. Crittenden and Catherine M. Bell an undivided one-half of said land, or of each or any part thereof, or that the said grant, transfer and conveyance became final on or about the 29th day of December, 1901, or ever, or at all.

XI. These defendants, and each of them, deny, upon information and belief, that the said U. S. Oil & Land Company was duly created or organized under and by virtue of the laws of the Territory of Arizona; and these defendants, and each of them, deny, upon information and belief, that the U. S. Oil & Land Company ever had its principal place of business outside of the Territory of Arizona and in the City and County of San

Francisco; and they deny upon information and belief that the U. S. Oil & Land Company was such corporation, or any corporation, on the 18th day of September, 1902; and they deny, upon information and belief, that the U. S. Oil and Land Company had, for a long time, or for any time, prior to the 18th day of September, 1902, or has ever since, been a corporation, or is now a corporation, existing by or under the Constitution and laws of the State of Arizona.

XII. These defendants, and each of them, deny, upon information and belief, that James L. Crittenden and Nina D. Crittenden, his wife, for a valuable consideration, sold, granted, transferred and conveyed, in fee simple or otherwise, to the U. S. Oil & Land Company an undivided one-half of, in and to the said tract, piece and parcel of land of 10,067.2 acres; but these defendants, and each of them, allege, upon like information and belief, that the said deed of conveyance from James L. Crittenden and Nina D. Crittenden to the U. S. Oil & Land Company was made without any consideration moving from the said grantee; and these defendants, and each of them, on like information and belief, deny that, on the 5th day of July, 1910, for a valuable consideration, or any consideration, the U. S. Oil & Land Company sold, granted, transferred and conveyed, in fee simple or otherwise, an undivided one-half of said 10,067.2 acres tract of land to the San Luis Land and Improvement Company by good and sufficient deed; and they deny, upon like information and belief; that the San Luis Land and Improvement Company is, or ever was, a corporation.

XIII. These defendants, and each of them, further answering, state and allege that, within the time provided by law, after the said Findings of Fact and Conclusions of Law in said action of John S. Bell vs. George Staacke et al. were made and filed on March 6th, 1901, as alleged in the bill of complaint, the defendants in said action, to wit, said George Staacke and Teresa Bell as the Special Administratrix of the Estate of Thomas Bell, deceased, made, served and filed in said action their

notice of intention to move for a new trial of said action, and thereafter, in due course of law, the said defendants made and submitted to said Court their motion for a new trial of said action, which motion was by said Court thereafter, to-wit, on June 7th, 1901, by an order duly entered in the minutes of said Court, denied. That thereafter, to-wit, on June 29th, 1901, said defendants made and served upon the plaintiff in said action, and filed with the Clerk of said Court, their notice of appeal to the Supreme Court of the State of California from the said order of the Court denying their said motion for a new trial of said action; and thereafter, in due time, said defendants made and filed in said action a sufficient and proper undertaking on their said appeal. That thereafter, in due time, said defendants filed in said Supreme Court their transcript of record on appeal from said order denying their said motion for a new trial. That thereafter the questions and matters involved in said appeal were argued by the respective parties and submitted to the said Supreme Court for decision. And thereafter the said Supreme Court, to-wit on the 28th day of December, 1903, made and entered its judgment and order in said action, reversing the said order of the Superior Court denying said motion of said defendants for a new trial, except as to the issues involving the indebtedness of John S. Bell to Thomas Bell, and ordering a new trial of all issues in said action except those relating to the said indebtedness of John S. Bell to Thomas Bell.

These defendants, and each of them, further state and allege that said order and judgment of reversal has never been vacated or set aside; that the new trial ordered by the Supreme Court as aforesaid was had in said Superior Court, April 19th, 1904, to May 2nd, 1904; that the plaintiff, John S. Bell, and his grantees, the said James L. Crittenden and Catherine M. Bell, appeared, submitted to the jurisdiction of the Court, and participated in said new trial, to-wit, they introduced and submitted to the Court on said new trial all the evidence that they had introduced and submitted

on the former trial of said action and more. That, thereafter, all the issues in said action, as to which a new trial was ordered as aforesaid, were by the respective parties submitted to the said Superior Court for decision; and thereafter, to-wit, on the 17th day of October, 1904, the said Superior Court made and filed its decision, wherein it decided that a lien existed upon the tract of land described in the bill of complaint herein and in the complaint and cross-complaint in said action of John S. Bell vs. George Staacke et al. in favor of the said defendant Teresa Bell as the Administratrix of the Estate of said Thomas Bell, deceased, for the payment to her, as such Administratrix, of the sum of \$95,901.07 and accruing interest, and that said Administratrix was entitled to a judgment foreclosing said lien and directing sale to be made of said tract of land to pay the costs and expenses of said sale and the amount aforesaid of said lien. That judgment according to said decision was duly entered in said action on the 28th day of October, 1904, to-wit, judgment that there was due and owing from John S. Bell, the plaintiff, to Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, the sum of \$95,901.07, and that said sum of \$95,901.07 and the costs of said defendants, taxed at \$608.50, was a valid lien upon the tract of land described in the complaint and cross-complaint in said action, and in the bill of complaint in this action, and that the defendant George Staacke held the legal title to said land in trust, first, as security for the payment of the aforesaid sum of \$95,901.07 and said costs, and second, in trust for the use and benefit of said John S. Bell; that all said land be sold by the Commissioner therein appointed at public auction, in the manner prescribed by law, and that said Commissioner, after the time for redemption had expired, execute a deed to the purchaser of said land; that Jesse L. Hurlbut be and was appointed Commissioner of said Court to make said sale; that said Commissioner pay out of the proceeds of such sale, retaining his fees and disbursements, to said Teresa Bell as such Administratrix, the said costs and the said sum

of \$95,901.07 and accruing interest; that the plaintiff and all persons claiming under him be forever barred and foreclosed of and from all equity of redemption in and to said land from and after the delivery of said Commissioner's deed; that the purchaser of said land at said Commissioner's sale be let into possession thereof; and that, if the moneys arising from said sale be insufficient to pay the amount found due said Administratrix, a judgment for such deficiency be docketed against the plaintiff John S. Bell. That said judgment described the lands to be sold, and they are the same as are described in the bill of complaint in this action, and in which the plaintiff claims an undivided one-half interest. That said Commissioner duly qualified, as required by the law and the said judgment. That the said judgment has never been vacated, set aside, modified or reversed, and the same became final and conclusive upon the parties to the said action and their assigns. That, on the — day of February, 1906, an order of sale was issued out of said Superior Court, upon said judgment and under the seal of said Court, to the said Commissioner, commanding him to sell the said tract of land in said judgment and order of sale described, accordingly as adjudged and directed by said judgment; and the said Commissioner, in pursuance of said judgment and said order of sale, did, on March the 5th, 1906, after due and legal notice given according to law, sell at public auction, at the place and hour required by law, the said tract of land and all thereof, to the highest bidder, to-wit, to said Teresa Bell, as the said Administratrix of the Estate of Thomas Bell, deceased, for the sum and amount due her by said judgment, together with said costs and the fees of said Commissioner, and all costs and expenses of said sale; and the said Commissioner thereupon, and on said 5th day of March, 1906, executed and delivered to said purchaser his certificate of said sale, and on the same day filed for record in the office of the County Recorder for said Santa Barbara County a duplicate of said certificate of sale. That thereafter, to-wit, on the 8th day of April, 1907, there having been

no redemption of said lands or of any part or portion thereof, the said Commissioner made, executed and delivered to said purchaser, to-wit, the said Teresa Bell as the Administratrix of the Estate of said Thomas Bell, deceased, a deed of conveyance of all said tract of land, and said Administratrix thereupon immediately entered into the possession of all said land, except the ranch residence, one corral and the garden, and about thirty-five acres surrounding said residence, which said residence and garden, corral and surrounding thirty-five acres were, until January 14th, 1911, occupied by said John S. Bell and his wife, Kate M. Bell, when said Administratrix recovered possession thereof by writ of assistance issued in said Superior Court in favor of said Teresa Bell as such Administratrix; and said Administratrix has ever since continued in the possession of the said lands and all thereof. That the said Administratrix, after the delivery of said certificate of sale to her as aforesaid, to-wit, on March 16th, 1906, notified all the tenants of said John S. Bell, and of his grantees, the said James L. Crittenden and Catherine M. Bell, alias Kate M. Bell, and the U. S. Oil & Land Company, of the fact that she held said certificate of sale, and demanded of said tenants the rents of said lands, and the said tenants and each and all thereof attorned to said Administratrix and paid to said Administratrix all the rents of said land falling due thereafter, to-wit, the rents of all said tract of land, except of the ranch residence and small portion of the land occupied as aforesaid by John S. Bell and his said wife; and said Administratrix ever since has been in the quiet and peaceable possession of all that portion of said tract of land occupied by said tenants who attorned to her as aforesaid.

These defendants, and each of them, further answering, deny that the said Superior Court in and for the County of Santa Barbara, or the Judge of said Court, in that action wherein Kate M. Bell et al. were plaintiffs and the San Francisco Savings Union et al. were defendants, being action No. 4424 in said Court, ever made the decision in the words and figures as alleged in

paragraph 10th of complainant's bill of complaint. These defendants, and each of them, admit that the said Court, after a trial of the issues raised by the pleadings in said action No. 4424, on March 14th, 1905, made and filed its decision consisting of Findings of Fact and Conclusions of Law; but they deny that the facts were found as alleged in paragraph 10th of said bill of complaint; and these defendants, as and for a part of their answer, refer to the said decision and the judgment in said action and make the same and each and all thereof a part of this their answer to the complainant's bill of complaint.

These defendants, and each of them, deny that said Teresa Bell, as Administratrix or otherwise, ever appealed to the Supreme Court of California from the judgment entered in said action No. 4424; but they admit that said Teresa Bell, as the Administratrix of the Estate of Thomas Bell, deceased, appealed from a portion of said judgment, to-wit, from all thereof except that portion which adjudged that the plaintiffs Kate M. Bell and James L. Crittenden and defendant to cross-complaint, U. S. Oil & Land Company, jointly and severally, take nothing by said action.

These defendants, and each of them, deny that Teresa Bell, as such Administratrix or otherwise, voluntarily paid to the said Mercantile Trust Company and San Francisco Savings Union or to either, the sum of \$179,400.40, or any part thereof, but allege that said sum of \$179,400.40 was paid to the San Francisco Savings Union on June 15th, 1908, upon an order of Court as hereinafter alleged, and that, long prior to that date, to-wit, on the 6th day of March, 1907, the said Estate of Thomas Bell, deceased, had become and ever since remained the owner of the said parcel of land containing 10,067.2 acres, by deed of conveyance by the Commissioner appointed to sell said land under the decree and order of sale entered in said action of John S. Bell vs. George Staacke et al. to said Teresa Bell, as such Administratrix, as hereinbefore in this answer alleged.

These defendants, and each of them, state and allege

that, prior to making the payment of said \$179,400.40, to-wit, on the 12th day of June, 1908, the Superior Court of the City and County of San Francisco, State of California, made and entered its order and judgment in the matter of the said Estate of Thomas Bell, deceased, whereby it ordered and adjudged that Teresa Bell as such Administratrix pay from the money and funds of the said Estate the sum of \$179,411.40 to said San Francisco Savings Union, in discharge and settlement of the amount due said San Francisco Savings Union on its said secured claim proved and allowed against said Estate and in satisfaction of the said judgment entered in said action No. 4424.

These defendants, and each of them, allege that the said sum of \$179,400.40 was paid by said Teresa Bell as such Administratrix from the moneys and funds of said estate, in accordance with the said judgment and order of said Superior Court in and for the City and County of San Francisco, and in accordance with said judgment entered in said action No. 4424, and to redeem the property of said estate, to-wit, said parcel of land of 10,067.2 acres, from the lien of said judgment entered in said action No. 4424; and the said San Francisco Savings Union, upon its receipt of the said sum of \$179,411.40, made, executed and delivered to said Teresa Bell, as such Administratrix, a deed of re-conveyance of all the land embraced in its said mortgage, to-wit, the 4000 acre tract and the said tract of 10,067.2 acres.

These defendants, and each of them, deny that said payment made as aforesaid by said Teresa Bell as such Administratrix was made with the intent, object and design, or with the intent, or object, or design, of depriving plaintiff of its right and interest, or right or interest, of, in and to, or of, or in, or to said undivided one-half of 10,067.2 acres of land, or of any part or portion thereof, or of its right, interest and equity, or right or interest or equity, in and to, or in or to, such portion of the proceeds of the sale of said 10,067.2 acres of land as should or would remain after the sale of said

lands by said Mercantile Trust Company under said judgment in said action No. 4424.

XIV. These defendants, and each of them, deny that the said Teresa Bell, as Administratrix with the Will annexed of the Estate of Thomas Bell, deceased, has volunteered to pay to the defendant the Mercantile Trust Company of San Francisco and to the defendant San Francisco Savings Union, or to either of them, the sum of \$179,411.40; but these defendants, and each of them, allege that the said Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, acting under and in accordance with an order made by the said Superior Court of the said City and County of San Francisco, in the matter of the Estate of Thomas Bell, deceased, paid to the defendant the San Francisco Savings Union the sum of \$179,411.40; that the said sum of \$179,411.40 was the amount ascertained and adjudged to be due the said San Francisco Savings Union by said Superior Court in said action No. 4424, referred to in the bill of complaint of the complainant herein, in the decree of foreclosure made and entered by the said Superior Court in the said action upon the cross-complaint of the defendants therein, foreclosing a mortgage which the said San Francisco Savings Union held as security for the payment of the said sum last mentioned, upon two certain tracts of land situate in the County of Santa Barbara, State of California, one of which tracts was described in the said judgment of foreclosure as containing 4000 acres, and the other was described in said judgment of foreclosure as containing 10,067.2 acres, the latter tract being the same tract or parcel of land in which the complainant herein, in its bill of complaint, claims an undivided one-half; that the said tract of 4000 acres was the property of the said Thomas Bell, deceased, at the date of his death, and remained as the property of his estate at the time the said decree of foreclosure aforesaid was entered; that, at the time the said decree of foreclosure was entered, the said other tract of land, to-wit, the said tract of land containing 10,067.2 acres, had

become and was the property, as hereinbefore alleged, of the Estate of Thomas Bell, deceased; that the Estate of Thomas Bell, deceased, owning the said tract of land containing 10,067.2 acres, was entitled to have the judgment aforesaid of the said Superior Court foreclosing the said mortgage and directing the sale of both said tracts paid and satisfied with the moneys of the said estate, and the costs and expenses of foreclosure sale thereby saved, and to that end and for that purpose, the order aforesaid of the said Superior Court of the City and County of San Francisco having charge of the settlement of the Estate of Thomas Bell, deceased, made its order aforesaid directing the said Teresa Bell, as the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, to pay from the moneys of the said estate the amount aforesaid of \$179,411.40, due under the said judgment of foreclosure, to the said San Francisco Savings Union.

XV. These defendants, and each of them, deny that the making and execution of the said re-conveyance by the said Mercantile Trust Company and the San Francisco Savings Union was contrary to, or in violation of, the judgment in said action No. 4424, or of any of its provisions, or of any trust therein adjudged or declared; and they and each of them deny that the said re-conveyance was wrongful, fraudulent and unlawful, or wrongful or fraudulent or unlawful or in violation of any rights or interests of the U. S. Oil & Land Company under said judgment and decree in said action No. 4424, or at all, or under said judgment dated June 29th, 1901; these defendants, and each of them, deny that the said transfer by said Mercantile Trust Company of San Francisco to Teresa Bell as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, to-wit, the said re-conveyance, was made under or in pursuance of any combination and conspiracy, or combination or conspiracy, entered into by the said Mercantile Trust Company, San Francisco Savings Union and said Teresa Bell, with the wrongful, unlawful and fraudulent intent, object, purpose and design, or wrong-

ful or unlawful or fraudulent intent or object or purpose or design, to defraud the said U. S. Oil & Land Company out of any right, title or interest in said 10,067.2 acres of land, or out of any right of the said U. S. Oil & Land Company, title or interest in or to the proceeds of the sale of said land remaining after the payment of the sums of money ordered by said decree to be paid; and they and each of them deny that the said U. S. Oil & Land Company had any right, title or interest whatever, at the date of the said re-conveyance by the said San Francisco Savings Union and the said Mercantile Trust Company, in the said tract of 10,067.2 acres of land, or in any part or portion thereof; and they and each of them deny that the said transfer, to-wit, the said re-conveyance made by the said Mercantile Trust Company and the San Francisco Savings Union, was made with any intent or purpose to evade and defeat, or evade or defeat, the provisions of said judgment and decree in said action No. 4424; and they and each of them deny that the said transfer was made secretly or in pursuance and execution of any combination or conspiracy, or with any fraudulent intents, objects, purposes or designs whatever; and these defendants, and each of them, deny that the said Teresa Bell, the Mercantile Trust Company and the San Francisco Savings Union knew, or that each or any of them knew, at the time of the said transfer and of the payment of the said sum of \$179,400.40, that said tract of land of 10,067.2 acres was worth, and of the value of, at least \$500,000, or of any greater value than \$100,000, or that they knew that the development of oil near or adjoining said lands made them prospectively worth \$1,000,000 or more; they and each of them deny that the said transfer was a fraud upon the U. S. Oil & Land Company and contrary to, or in violation of, the said decree in said action No. 4424; they and each of them deny that the defendants in this action wrongfully and unlawfully, or wrongfully or unlawfully claim and assert, or claim or assert, that the said deed and conveyance of May 26th, 1908, transferred and vested in said Teresa

Bell as such Administratrix the title of, in and to said tract of land consisting of 10,067.2 acres; and they and each of them deny that the said claim of the defendants in this action was without merit or wrongful or unlawful or contrary to, or in conflict with, said judgment in said action No. 4424, or a fraud upon the complainant in this action, or was or is made with the wrongful or fraudulent or unlawful intents, purposes or designs of defrauding the said U. S. Oil & Land Company, or its successors or grantees, out of its interest in or title to an undivided one-half of said 10,067.2 acres of land; they and each of them deny that the said Mercantile Trust Company was required, in or by said decree in said action No. 4424, to advertise the said 10,067.2 acres of land, or sell or offer for sale the same when the money due the San Francisco Savings Union, under the provisions of the judgment in said action No. 4424, was tendered to and paid to the said San Francisco Savings Union by the owner of the lands described in said judgment of foreclosure; and they and each of them deny that the said Mercantile Trust Company has wholly or at all failed or neglected to perform its duties as trustee under said decree in said action No. 4424, or has attempted to transfer and dispose of the said tract of 10,067.2 acres of land contrary to, or in violation of, any trust declared or set forth in said decree in said action No. 4424, or with any wrongful or unlawful or fraudulent intents, objects, purposes or designs whatever; these defendants, and each of them, deny that the said George Staacke had any right, title or interest whatever in or to the said 10,067.2 acres of land, or in or to any portion thereof, at the time of the rendition of the said judgment in the said action No. 4424.

XVI. These defendants, and each of them, deny, upon information and belief, that the San Luis Land and Improvement Company is a corporation, and deny, upon like information and belief, that the San Luis Land and Improvement Company, for a valuable consideration sold, granted, transferred and conveyed, in fee simple or otherwise, to the complainant U. S. Oil &

Land Company, by good and sufficient deed and conveyance, or otherwise, an undivided one-half of said 10,067.2 acres of land; and these defendants, and each of them, allege upon information and belief, that the San Luis Land and Improvement Company and the said U. S. Oil & Land Company, and each thereof, are fictitious and sham corporations, and have no property, organization or identity, except the name; and these defendants, and each of them, allege, upon information and belief, that a name and semblance of organization was given the said U. S. Oil & Land Company and the San Luis Land and Improvement Company by James L. Crittenden, the grantee of the said John S. Bell, and that the said James L. Crittenden has used the names U. S. Oil & Land Company and San Luis Land and Improvement Company whenever it suited his purpose to make or assert any claims upon or in reference to the said 10,067.2 acres; and these defendants, and each of them, allege, upon information and belief, that the said James L. Crittenden is the actual complainant in this action, and that he is using the name U. S. Oil & Land Company for the complainant instead of his own.

XVII. These defendants, and each of them, have no information or belief on the subject sufficient to enable them to answer the allegations made upon pages 105, 106 and 107 of the bill of complaint herein to the effect that John S. Bell, on the 22nd day of December, 1906, for a valuable consideration, conveyed to Catherine M. Bell the said tract of 10,067.2 acres, and that said John S. Bell and Catherine M. Bell, on the 12th day of June, 1897, for valuable consideration, conveyed to James L. Crittenden and Sidney M. Van Wyck, Jr., an undivided one-half of said tract of land, and that, on the 7th day of March, 1899, for a valuable consideration, the said Sidney M. Van Wyck, Jr., conveyed to James L. Crittenden all his right, title and interest in said tract of land; and, basing their denial upon that ground, they and each of them deny that the said tract of land of 10,067.2 acres or any part thereof, or any interest therein, was ever, for a valuable consideration, or for any

consideration, sold, transferred or conveyed by deed of conveyance, or otherwise, by John S. Bell to Catherine M. Bell, or John S. Bell and Catherine M. Bell to James L. Crittenden, or by James L. Crittenden and Nina D. Crittenden to U. S. Oil & Land Company, or by John S. Bell to James L. Crittenden and Sidney M. Van Wyck, Jr., or by Sidney M. Van Wyck, Jr., to James L. Crittenden; and these defendants, and each of them, deny that any deeds of conveyance have been executed and recorded by said John S. Bell and Catherine M. Bell, Sidney M. Van Wyck, Jr., and James L. Crittenden and Nina D. Crittenden, U. S. Oil & Land Company and San Luis Land and Improvement Company, or any of them, which granted and conveyed an undivided one-half of said tract of 10,067.2 acres of land.

XVIII. These defendants, and each of them, deny that the said George Henry Howard and O. H. Harshbarger, or either of them, had notice or knowledge, at any time, of any title or interest of the complainant in or to an undivided one-half of said 10,067.2 acres of land, or that they, or that either of them, at any time, had any notice or knowledge that the said tract of land had been or was deeded or conveyed by Dwight W. Grover and Samuel Rosener for the benefit of John S. Bell, or that John S. Bell was then the owner thereof, or that said Grover and Rosener had, on and prior to March 7th, 1889, agreed to convey said tract of land to said John S. Bell, or that said George Staacke paid no consideration whatever for said tract of land, or that said George Staacke received and executed said deed of conveyance and held the title to said tract of land as trustee.

These defendants, and each of them, deny that George Staacke received and accepted any deed of conveyance by Dwight W. Grover and Samuel Rosener and held the title to said 10,067.2 acres of land as trustee for the benefit of John S. Bell, from the time he received the same to the time of his death, or for or during any time whatever; and deny that the deed of conveyance by said Howard to said Harshbarger was made with

the or any fraudulent or unlawful intent, object or purpose or design, to defeat any trust upon which said land had been conveyed by said Grover and Rosener to said George Staacke, or to deprive the plaintiff or the successors in interest of John S. Bell of the benefits of any trust or of their rights thereunder.

These defendants, and each of them, deny that each and all of the defendants in this action, or that any of them, ever had any notice that the judgment alleged to have been made and filed on the 29th day of June, 1901, in the action entitled "John S. Bell vs. George Staacke et al.," was a valid, subsisting or final judgment, or that the Findings made and filed in said action, March 6th, 1901, were valid, conclusive or final, or of any right, title or interest of the complainant of, in or to an undivided one-half of said tract of 10,067.2 acres of land.

These defendants, and each of them, deny that the defendants W. P. Hammon and F. C. Van Deinse did, on or about the 1st day of June, 1911, or at any time, wrongfully or unlawfully enter upon a portion of said lands, or bore a well for the purpose of extracting oil from said land, with the wrongful and unlawful intent, object, purpose and design, or that the complainant suffered any loss thereby or was damaged or injured thereby; and deny that the defendants W. P. Hammon and F. C. Van Deinse threaten or are about to bore, or cause to be bored, other wells, with any wrongful and unlawful intent, object, purpose and design; and deny that the extraction of oil from said land, of the sale thereof, by said Hammon or Van Deinse, or both, will damage or injure the complainant.

These defendants, and each of them, deny that Teresa Bell, as such Administratrix, or otherwise, wrongfully or unlawfully claims or asserts that she has acquired title to said 10,067.2 acres of land, and deny that the complainant is, or ever was, entitled to any of the rents, issues or profits of said land, or of any part thereof; and deny that the appropriation by Teresa Bell, as such Administratrix, of any or of all the rents, income and profits of said land will cause any loss, injury or dam-

age to the complainant.

XIX. These defendants, and each of them, deny that, on or about the 20th day of May, 1908, or at any time, the said Teresa Bell, Mercantile Trust Company, and San Francisco Savings Union combined and conspired together, and made and entered into a secret combination and conspiracy, or combination, or conspired together, or made or entered into a secret combination or conspiracy, to evade and defeat, or evade or defeat, the decree in said action No. 4424, or to deprive the complainant of any right, title or interest in or to an undivided one-half of said tract of 10,067.2 acres of land, or of any interest in, or part of the proceeds that might be obtained by a sale of said land, or that they did, in pursuance of said alleged combination and conspiracy, or with the wrongful, unlawful and fraudulent intent, object, purpose and design of evading or defeating said decree in said action No. 4424, or of depriving said complainant of any right, title and interest in and to an undivided one-half of said tract of land, or any product of the sale thereof under said decree, have and cause said deed dated May 26th, 1908, to be made and executed and recorded; and deny that said deed dated May 26th, 1908, was made by said Mercantile Trust Company and San Francisco Savings Union, or by either of them, under or in pursuance of, or execution of, any wrongful or unlawful combination or conspiracy, or in pursuance or execution of any conspiracy or combination whatever.

These defendants, and each of them, deny that C. A. Hunt has in his possession or under his control the deed of conveyance made and executed by George Staacke to Catherine M. Bell and James M. Crittenden; and these defendants, and each of them, allege that the said deed of conveyance has served the purpose for which it was executed and deposited with said Clerk of the Court, as hereinbefore in this answer alleged, and is now of no effect or validity.

XX. Answering further, these defendants, and each of them, allege that each and every claim and all the

right, title and interest that the complainant herein ever had or asserted against, in, or to the said tract of 10.067.2 acres of land were disposed of against the complainant and its grantors by the final judgments of the Superior Court of the State of California, in and for the County of Santa Barbara, in the said two actions entitled "John S. Bell vs. George Staacke et al." and "Kate M. Bell, John S. Bell and James L. Crittenden, et al., vs. San Francisco Savings Union et al.," respectively, and by the sale under the foreclosure decree and order of sale issued thereon in the said action entitled "John S. Bell vs. George Staacke et al.," as hereinbefore in this answer alleged; but, notwithstanding that the said claims and asserted rights and interests of the complainant in and to the said tract of 10.067.2 acres were finally adjudicated, determined and disposed of, as hereinbefore alleged, against the complainant, the said complainant has continued to assert the said claims and harass the defendants in this action by bringing suit after suit upon said claims in the said Superior Court of the State of California, in and for the County of Santa Barbara, to-wit, the said U. S. Oil & Land Company, by its Attorney James L. Crittenden, commenced an action in the said Superior Court on the 9th day of March, 1910, against these defendants and the other defendants named herein, by filing a complaint therein which asserted substantially the same alleged cause of action as is asserted by the bill of complaint herein, and in which the same relief was asked and as is prayed for in the bill of complaint herein; that these defendants appeared in said action in the said Superior Court and made, served and filed their answer therein on the 9th day of April, 1910, and caused the said action to be set for trial on a day certain by the said Superior Court, at the City of Santa Barbara, State of California, to-wit, on the — day of —, 1910; that, on said day that the said action was set for trial as aforesaid, these defendants, by their counsel, appeared in said Court ready for trial; that, a few minutes before the said action was called for trial by the Judge of the said Superior Court,

the said U. S. Oil & Land Company, by its attorneys the said James L. Crittenden and Richards and Carrier, filed and procured to be entered in the Clerk's office of said Court a dismissal of the said action; that the action so dismissed was numbered 7480 of said Superior Court.

That the said U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards and Carrier, on the 4th day of March, 1911, began another action against these defendants and the other defendants named in the bill of complaint herein, by filing a complaint in the Clerk's office of the said Court, which complaint set forth and alleged the same cause of action as was alleged in the previous action, to-wit, in the action No. 7480, and as is alleged in the bill of complaint herein. Said second action in said Superior Court was numbered 7787. That these defendants entered their appearance in the said action No. 7787 in the said Superior Court, and filed therein, on the 29th day of July, 1911, their answer, which answer set up the defense of res judicata in the final judgments in the said actions entitled "John S. Bell vs. George Staacke et al," and "Kate M. Bell et al. vs. San Francisco Savings Union et al," and the sale and conveyance of said tract of 10,067.2 acres under the decree and order of sale in the action entitled "John S. Bell vs. George Staacke et al," and these defendants thereupon caused the said action No. 7787 to be set for trial on a day certain by said Superior Court, to-wit, on the 17th day of October, 1911; that, on the said 17th day of October, 1911, these defendants appeared in the said Superior Court, at the City of Santa Barbara, ready for the trial of said action; that, a few minutes before the said action was called for trial by the Judge of the said Superior Court, the said attorneys for the said U. S. Oil & Land Company filed, in the name of said U. S. Oil & Land Company, in said Court, a dismissal of the said action and caused such dismissal to be entered; that the defense of these defendants interposed to said action No. 7787 in said Superior Court was the same as the defense interposed as aforesaid in said action No. 7480 of said Superior Court.

These defendants, and each of them, upon information and belief, allege that the U. S. Oil & Land Company named as complainant herein is not a corporation, but is given the name and semblance of a corporation by the said Attorneys James L. Crittenden and Richards and Carrier.

XXI. These defendants, and each of them, further answering, state and allege that the cause of action alleged in the bill of complaint, and each and all of the matters alleged therein as ground for relief, are stale and are barred by the Statutes of Limitation.

Wherefore these defendants, and each of them, having fully answered the bill of complaint, pray that the Court will ascertain and determine that the complainant is not entitled to any relief; that decree be entered dismissing the said bill of complaint; that the Court make its decree in favor of these defendants and of each of them, enjoining the complainant and its attorneys, the said James L. Crittenden and the said Richards and Carrier, and each and all of its agents, from bringing any other or further action or actions or proceedings upon any of the matters alleged and complained of in the bill of complaint; and that these defendants recover their costs; and that the Court will grant unto these defendants, and to each of them, such other or further relief as they may be entitled to in the premises.

Teresa Bell, Defendant.

T. Z. Blakeman,

Solicitor for the Defendants Teresa Bell, as Administratrix of the Estate of Thomas Bell, Deceased; George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the Will of George Staacke, Deceased; Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell.

State of California, City and County of San Francisco, ss.

Teresa Bell, being duly sworn, deposes and says:

That she is the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed; that she is a defendant in the above entitled cause as such Administratrix, and also in her individual capacity; that she has heard read the foregoing Answer to the Bill of Complaint, and knows the contents thereof; that the same is true of her own knowledge, except as to matters therein stated upon information and belief, and as to those matters she believes it to be true.

Teresa Bell.

Subscribed and sworn to before me this 31st day of May, 1912.

Edith W. Burnham,
Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

(Endorsed.) Filed June 3, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

TITLE OF COURT AND CAUSE.

The joint and several demurrers of the above named defendants Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, John Llewellyn Auzerai, and Peter J. Crosby, to the bill of complaint of the above named complainant, U. S. Oil & Land Company.

These defendants, respectively, by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto and for cause of demurrer sheweth:

That the said complainant has not made or stated any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants, respectively.

Wherefore, and for divers other good causes of demurrer, these defendants, respectively, demur to the said

bill of complaint and humbly demand the judgment of this Court whether they or either of them shall be compelled to make any further or other answer thereto.

Peter J. Crosby,

Solicitor for said defendants Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, John Lewellyn Auzerais and Peter J. Crosby.

Northern District of California, City and County of San Francisco, ss.

W. E. Bell, also known as Eustace Bell, one of the defendants above named, makes solemn oath and says: That the foregoing demurrer is not interposed for delay, and that the same is true in point of law.

W. E. Bell, also known as Eustace Bell.

Subscribed and sworn to before me this 31st day of May, A. D. 1912.

Edith W. Burnham,

Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Peter J. Crosby,

Solicitor for said defendants Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, John Lewellyn Auzerais and Peter J. Crosby.

(Endorsed.) Filed June 3, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

TITLE OF COURT AND CAUSE.

Joint and Several Answer of Certain Defendants to Complainant's Bill of Complaint.

Now comes the defendants Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, John Lewellyn Auzerais,

and Peter J. Crosby, and answering the bill of the complainant herein jointly and severally deny, state and allege as follows:

I. They, the said defendants, and each thereof, here answering, deny upon information and belief, that the complainant, the U. S. Oil & Land Company, was a corporation formed and organized by and under the laws of the Territory of Arizona or that the U. S. Oil & Land Company is a corporation existing by and under the laws of the State of Arizona, or is a corporation, or that the said U. S. Oil & Land Company is a citizen of the State of Arizona, or that the said U. S. Oil & Land Company was organized as, or has ever become, a corporation under or by the laws of the Territory of Arizona, or that the said U. S. Oil & Land Company ever became or was or is a corporation existing by or under the provision of the constitutions or laws of the State of Arizona.

II. These defendants and each of them deny that the complainant is the owner in fee simple absolute or otherwise, of an undivided one-half or of any portion of that certain tract, piece and parcel of land lying and being in the County of Santa Barbara, State of California, consisting of 10,067.2 acres, being the tract, piece and parcel of land bounded and particularly described in the complainant's bill of complaint, at pages 4 to 7, inclusive, thereof.

III. These defendants, and each of them, deny that George Staacke ceased to be executor of the estate of Thomas Bell, deceased, on the 4th day of May, 1900, but these defendants and each of them, state and allege that, on the 23rd day of March, 1900, the Superior Court of the State of California, in and for the City and County of San Francisco, having charge and jurisdiction in the settlement of the Estate of Thomas Bell, deceased, duly made and entered its Order in the matter of the said Estate, suspending the powers of the said George Staacke as the sole remaining Executor of the will of the said decedent, Thomas Bell, and appointing Teresa Bell, one of the defendants herein, as Special

Administratrix of the Estate of the said Thomas Bell, deceased; that the said Teresa Bell thereupon and on the 23rd day of March, 1900, duly qualified as such Special Administratrix, and Letters of Special Administration of the said Estate were duly issued to her under the seal of the said Court, and she thereupon, as such Special Administratrix, took possession of the assets, books records and papers of the said Estate, and thereafter continued and remained as Special Administratrix of the Estate of Thomas Bell, deceased, until she qualified, as hereinafter alleged, as the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed; that, on the 3rd day of May, 1900, after a trial had before the said Superior Court of the charges made against the said George Staacke as Executor, the said Superior Court made its Order revoking the Letters Testamentary theretofore issued to the said George Staacke as Executor of the will of the deceased Thomas Bell; that the said George Staacke appealed to the Supreme Court of the State of California from the said Order of the Superior Court revoking the said Letters Testamentary; that, on the 24th day of December, 1901, the judgment of the Supreme Court of the State of California was made in the matter of the said appeal by the said George Staacke, whereby the said Order revoking the said Letters Testamentary was affirmed; that, after the Order of the said Superior Court revoking the said Letters Testamentary issued to the said George Staacke had become final as aforesaid, the said Teresa Bell, who was and is the widow of the said deceased Thomas Bell, petitioned the said Superior Court for General Letters of Administration upon the said Estate of Thomas Bell, deceased, with the Will annexed, and thereafter, to wit, on the 13th day of February, 1902, the said Superior Court duly made and entered its Order in the matter of the said Estate of Thomas Bell, deceased, whereby the said Teresa Bell was appointed Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed; that she thereafter, to wit, on the 19th day of February, 1902, duly qualified as such Administratrix, and Letters of Administration were, on

the 19th day of February, 1902, issued to her under the seal of the said Court, as Administratrix of the said Estate with the Will annexed; that she, the said Teresa Bell, thereupon ceased to be Special Administratrix of the said Estate, and thereupon became, and ever since has been, Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed.

IV. These defendants, and each of them, admit that the defendants Teresa Bell, Thomas Frederick Bell, Bessie M. Bell, Eustace Bell, Reginald Bell, Muriel Bell, Robina Vellguth, Arthur S. Holman and Peter Crosby claim and assert an estate and interest in and to said tract of land, as the heirs and devisees, or as assignees of the heirs and devisees, of the said Thomas Bell, deceased; but they deny that any of the other of these defendants claim or assert, or has any estate or interest in said tract of land, or in any part or portion thereof, except that the defendants Alexander D. Keyes, Thomas E. Palmer and Florence Adele Gibson claim an interest in said land as mortgagees of the defendant, Muriel Bell and except that the defendant Rauer's Law and Collection Company claims an interest in said land as the holder of a judgment against the defendant Thomas Frederick Bell, and the defendant Josephine M. Holbrook and the defendant John Lewellyn Auzerai and defendant Daniel A. McColgan and defendant, R. McColgan, each claims an interest as mortgagee of the defendants Thomas Frederick Bell and Bessie M. Bell, and except that defendant W. P. Hammon and defendant F. C. Van Deinse each claims an interest in said tract as assignees of said heirs of Thomas Bell, deceased.

These defendants, and each of them, deny that the claims of the defendants having interests as aforesaid in said land are without any right whatever, or that they and each of them have not any right, title or interest in or to said tract of land, or any part or portion thereof; and they deny that the claims made by those defendants hereinbefore alleged to have an interest in said land are wrongful and unlawful and without any right whatever, or are wrongful or unlawful or without any right; and they deny that said defendants hereinbefore alleged to have an interest in said land have not any right, title

or estate or interest in or to the undivided one-half of the said tract, piece or parcel of land, or in or to any part or portion thereof.

V. These defendants, and each of them, deny that the judgment alleged in the bill of complaint to have been made and filed in the Superior Court of Santa Barbara County on the 29th day of June, 1901, in the action in said Superior Court entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," was in the words and figures alleged and set forth in said bill of complaint; but admit that a judgment of like purport was made by the said Superior Court and filed in said action on the 29th day of June, 1901.

VI. These defendants, answering that portion of paragraph 8th which refers to the notice of appeal by George Staacke, individually, and Teresa Bell, as Special Administratrix of the Estate of Thomas Bell, deceased, to the Supreme Court of the State of California, allege that the said bill of complaint does not state correctly or fully the appeal taken or the action of the Supreme Court of the State of California in disposing of the said case; but these defendants, and each of them, allege that the said notice of appeal, dated as alleged on the 8th day of July, 1901, included a notice of appeal taken to the said Supreme Court from the order of the said Superior Court made and entered on the 7th day of June, 1901, denying the motion of the said defendants George Staacke, individually, and Teresa Bell, as Special Administratrix of the Estate of Thomas Bell, deceased, for a new trial of the said action; that the plaintiff in said action moved the said Supreme Court of the State of California to dismiss both of the appeals of the said defendants, to-wit: The appeal from the order denying a new trial and the appeal from the judgment; that the Supreme Court of the State of California granted the motion of the plaintiff to dismiss the appeal taken from the judgment, but denied the motion to dismiss and appeal from the order refusing a new trial.

These defendants, and each of them, deny that the

said judgment and decree of the said Superior Court upon the dismissal of the appeal from the judgment by said Supreme Court thereby became and was affirmed, and they deny that the said judgment and decree ever since has been, or remains, or still is, in full force, or in or of any force or effect whatever; and they deny that said judgment and decree was or is a final adjudication of the rights or interests of the parties to the said action in which it was rendered.

And these defendants, and each of them, further answering in respect to said judgment and decree, allege that the said appeal by the said defendants from the said Order denying their motion for a new trial, after the dismissal as aforesaid of the appeal from the judgment, came on for hearing and was heard by the said Supreme Court of the State of California, and the said Supreme Court of the State of California, on the 28th day of December, 1903, made and entered its Order and judgment whereby the Order of the said Superior Court denying the said defendants' motion for a new trial of the said action was reversed and a new trial of said action ordered; "except as to the issues covered by the 23rd Paragraph of the Findings and the following portion of the 22nd Paragraph of the Findings, to wit: 'That John S. Bell was indebted to Thomas Bell, on the 16th day of October, 1892, the day that Thomas Bell died, on account of advances of money and interest thereon in the sum of \$52,120.15', and Paragraph '4' of the Conclusions of Law, and except as to the issues covered by the 'Additional Findings'"; that is to say, the Supreme Court, by its judgment aforesaid ordered a new trial of all the issues made by the pleadings in the said action of John S. Bell vs. George Staacke et al., except the issues relating to the indebtedness of the said John S. Bell to Thomas Bell at the date of the death of Thomas Bell. That the new trial of the said action ordered by the Supreme Court as aforesaid was had in the said Superior Court, April 19th to May 22nd, 1904, and the plaintiff therein, the said John S. Bell, and James L. Crittenden, the grantee of John S. Bell, and the grantor of the complainant U. S. Oil & Land Com-

pany, appeared and participated in the re-trial of the said action; that thereafter all of the issues in the said action, as to which a new trial was ordered as aforesaid, were, by the respective parties to the said action, submitted to the said Superior Court for decision, and thereafter, to wit, on the 17th day of October, 1904, the said Superior Court made and filed its decision, wherein it was decided that a lien existed upon the tract of land described in the complaint in said action, being the same tract of land described in the bill of complaint herein, of which the complainant herein claims an undivided one-half, in favor of the said defendant Teresa Bell as the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, for the payment to her, as such Administratrix, under the allegations in the cross-complaint of the defendants in said action, in the sum of \$95,901.07 and accruing interest, and that the said Administratrix was entitled to a judgment foreclosing said lien and directing sale to be made of said tract of land to pay the cost and expenses of said sale and the amount aforesaid of said lien; that the judgment of the said Superior Court, according to the said decision, was duly entered in said action, on the 28th day of October, 1904, to wit, judgment that there was due and owing from John S. Bell to the defendant Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, the sum of \$95,901.07, and that the said sum and the costs of the said defendant, taxed at \$608.50, was a valid lien upon the tract of land described in the complaint and cross-complaint in said action, and in the bill of complaint of the complainant herein; and that the defendant George Staacke held the legal title to said land, in trust, first as security for the payment of the aforesaid sum of \$95,901.07 and said costs; and, second, in trust for the use and benefit of said John S. Bell; that all of said land be sold by the Commissioner appointed therein at public auction, in the manner prescribed by law, and that said Commissioner, after the time for redemption had expired, execute a deed to the purchaser of said land; that

Jesse L. Hurlbut be and was appointed Commissioner of said Court to make said sale, and that said Commissioner pay out the proceeds of said sale, retaining his fees and disbursements, to said Teresa Bell as such Administratrix the said costs and the said sum of \$95,901.-07 and accruing interest, and that the plaintiff, and all persons claiming under him, be forever barred and foreclosed of and from all equity of redemption in and to said land, from and after the delivery of said Commissioner's deed, and that the purchaser of said land at said Commissioner's sale be let into possession thereof, and that, if the moneys arising from said sale be insufficient to pay the amount found due to said Administratrix, judgment for such deficiency be docketed against the plaintiff, John S. Bell. That the said judgment described the lands to be sold, and they are the same as are described in the bill of complaint in this section, in which the complainant claims an undivided one-half.

These defendants, and each of them, further allege that an appeal to the Supreme Court of the State of California was duly taken and prosecuted from the said judgment of the Superior Court made and entered as aforesaid on the 17th day of October, 1904, by the plaintiff therein, John S. Bell, and by his grantees, James L. Crittenden and Kate M. Bell, and that thereafter the said Supreme Court, on the 2nd day of January, 1906, made and entered its Order and judgment whereby the said appeal from the said judgment was dismissed. That the plaintiff, John S. Bell, in the said action, and his grantees, James L. Crittenden and Kate M. Bell, who were, as alleged in the complainant's bill of complaint herein, allowed to prosecute the said action of John S. Bell vs. George Staacke et al., in the name of the plaintiff, made a motion for a new trial of the said action, which resulted as aforesaid in the judgment entered as aforesaid on the 17th day of October, 1904, and said motion for a new trial was, by said Superior Court, denied, and an appeal from said Order denying a new trial as aforesaid was duly taken by and in the name of the said plaintiff, John S. Bell, to the Supreme Court of the

State of California; that the said Supreme Court, on the 22nd day of July, 1907, made and entered its Order whereby the said appeal from the said Order of the Superior Court, denying said motion for a new trial, was affirmed.

VII. These defendants, and each of them, deny that the Additional Findings and Conclusions of Law made and filed by the Judge of the said Superior Court on the 7th day of June, 1901, in the said action entitled "John S. Bell vs. George Staacke et al." were made or filed upon or at a special instance and request of the Attorneys of and for the defendants in said action; but allege that said Additional Findings and Conclusions of Law were, as therein stated, made by the said Court of its own motion.

VIII. These defendants, and each of them, further answering, state that it is and has been since and prior to the first day of January, 1900, the law of the State of California, when a judgment of the Superior Court of the said State has been duly made and entered in an action pending therein against the plaintiff or defendant, and the losing party has appealed to the Supreme Court of the said State from the judgment, and has moved in the said Superior Court for a new trial of the action and the motion for a new trial has been denied by the said Superior Court, and an appeal from the Order denying a new trial has been taken by the said losing party to the Supreme Court of the said State, and the appeal from the judgment has been dismissed or affirmed by the said Supreme Court, and thereafter the said Supreme Court has considered the said appeal from the Order denying a new trial and has made its judgment reversing the Order denying a new trial and ordering a new trial, the effect of the said judgment of the Supreme Court reversing the Order denying a new trial and ordering a new trial of the action is to vacate and set aside the said judgment, and that, thereupon, the action remains pending in said Superior Court for the re-trial, to all intents and purposes as if no previous trial had been had or prior judgment entered.

IX. These defendants, and each of them, deny that the time to serve and file any notice of intention to move for a new trial in the said action entitled "John S. Bell vs. George Staacke et al." after the decision therein made by the said Superior Court on the 6th day of March, 1901, expired on or about the 17th day of June, 1901; but these defendants, and each of them, allege that notice of intention to move for a new trial in said action, after the said decision of the said Court made on the 6th day of March, 1901, was duly made, served and filed thereafter, within ten days, by the defendants in said action, after service of notice upon them of the making and filing of the said decision. And these defendants, and each of them, deny that the Findings of Fact and Conclusions of Law, and the decision of the said Superior Court in said action of John S. Bell vs. George Staacke et al., became, on the 9th day of July, 1901, or ever since have been, final, conclusive and binding, or final or conclusive or binding upon all the parties to the said action, or upon their successors in interest, or upon each or all or any of the heirs of said Thomas Bell, deceased; and they, and each of them, deny that the jurisdiction and power of the said Superior Court to hear or grant any motion for a new trial in said action was then terminated forever or ceased to exist; and they, and each of them, deny that the said Superior Court, or the Supreme Court of the State of California, or any Appellate Court of the said State, ceased to have any jurisdiction to entertain or hear or pass upon or review any notice of intention to move for a new trial, or any motion for a new trial in said action, or any Order made on any such notice or motion, or to modify, alter or change, in any way or manner or respect, said judgment of said Superior Court. These defendants, and each of them, deny that the Order and judgment of the Supreme Court, made on the 16th day of September, 1902, by which the appeal taken by the defendants in the said action entitled "John S. Bell vs. George Staacke et al.", was dismissed, has never been modified, vacated or set aside; but these defendants, and each of them,

state and allege that the judgment of the said Supreme Court thereafter made on the appeal of the said defendants from the Order of the Superior Court denying their motion for a new trial, by which the Order of the said Superior Court denying a new trial was reversed and a new trial in said action ordered, did, in its effect, vacate, set aside and render of no effect the judgment of the said Superior Court theretofore entered.

X. These defendants, and each of them, deny that the said George Staacke ever made or executed to James L. Crittenden and Catherine M. Bell, or delivered, on the 9th day of July, 1901, or at any other time, to C. A. Hunt as County Clerk of the said County of Santa Barbara, or as Clerk of said Superior Court, any deed of conveyance under or in accordance with the judgment and decree made and filed in said action of John S. Bell vs. George Staacke et al., on the 29th day of June, 1901, whereby said George Staacke granted and conveyed and transferred to the said James Crittenden, in fee simple or otherwise, an undivided one-half of all said tract of land containing 10,067.2 acres; but these defendants, and each of them, allege that, when the defendants in the said action of John S. Bell vs. George Staacke et al. appealed to the Supreme Court from the judgment therein made and filed on the 29th day of June, 1901, and from the Order of the said Superior Court denying the motion of the defendants for a new trial, they were required, under and by the laws of the State of California, in order to obtain a stay of execution of that part of the judgment from which they had appealed as aforesaid, to make and deposit with the Clerk the deed of conveyance required by the said judgment and decree to be executed, and a deed of conveyance such as the said judgment required to be made and executed by the said George Staacke to the said James L. Crittenden and Catherine M. Bell was, by the said defendants so appealing, procured to be made, and was made and duly acknowledged by the said George Staacke and delivered to the said C. A. Hunt as the Clerk of the said Superior Court, for the purpose of complying with the require-

ment of the law as aforesaid, in order to obtain a stay of the execution of the said judgment from which the appeal as aforesaid was taken. And these defendants, and each of them, deny that the said deed of conveyance, made and acknowledged as aforesaid, was delivered to the said C. A. Hunt, as such Clerk, for James L. Crittenden or Catherine M. Bell, or for the benefit of them or either of them; and these defendants, and each of them, deny that the said deed of conveyance was an absolute grant, deed, transfer and conveyance of the title in fee of, in and to said tract, piece and parcel of land of 10, 067.2 acres to said James L. Crittenden and Catherine M. Bell; and these defendants, and each of them, deny that the said deed of conveyance vested unto said James L. Crittenden and Catherine M. Bell an undivided one-half of said land, or of each or any part thereof, or that the said grant, transfer and conveyance became final on or about the 29th day of December, 1901, or ever, or at all.

XI. These defendants, and each of them, deny, upon information and belief, that the said U. S. Oil & Land Company was duly created or organized under and by virtue of the laws of the Territory of Arizona; and these defendants, and each of them, deny, upon information and belief, that the U. S. Oil & Land Company ever had its principal place of business outside of the Territory of Arizona and in the City and County of San Francisco; and they deny upon information and belief that the U. S. Oil & Land Company was such corporation, or any corporation, on the 18th day of September, 1902; and they deny, upon information and belief, that the U. S. Oil and Land Company had, for a long time, or for any time, prior to the 18th day of September, 1902, or has ever since, been a corporation, or is now a corporation, existing by or under the Constitution and laws of the State of Arizona.

XII. These defendants, and each of them, deny, upon information and belief, that James L. Crittenden and Nina D. Crittenden, his wife, for a valuable consideration, sold, granted, transferred and conveyed, in fee

simple or otherwise, to the U. S. Oil & Land Company an undivided one-half of, in and to the said tract, piece and parcel of land of 10,067.2 acres; but these defendants, and each of them, allege, upon like information and belief, that the said deed of conveyance from James L. Crittenden and Nina D. Crittenden to the U. S. Oil & Land Company was made without any consideration moving from the said grantee; and these defendants, and each of them, on like information and belief, deny that, on the 5th day of July, 1910, for a valuable consideration, or any consideration, the U. S. Oil & Land Company sold, granted, transferred and conveyed, in fee simple or otherwise, an undivided one-half of said 10,067.2 acres tract of land to the San Luis Land and Improvement Company by good and sufficient deed; and they deny, upon like information and belief; that the San Luis Land and Improvement Company is, or ever was, a corporation.

XIII. These defendants, and each of them, further answering, state and allege that, within the time provided by law, after the said Findings of Fact and Conclusions of Law in said action of John S. Bell vs. George Staacke et al. were made and filed on March 6th, 1901, as alleged in the bill of complaint, the defendants in said action, to wit, said George Staacke and Teresa Bell as the Special Administratrix of the Estate of Thomas Bell, deceased, made, served and filed in said action their notice of intention to move for a new trial of said action, and thereafter, in due course of law, the said defendants made and submitted to said Court their motion for a new trial of said action, which motion was by said Court thereafter, to-wit, on June 7th, 1901, by an order duly entered in the minutes of said Court, denied. That thereafter, to-wit, on June 29th, 1901, said defendants made and served upon the plaintiff in said action, and filed with the Clerk of said Court, their notice of appeal to the Supreme Court of the State of California from the said order of the Court denying their said motion for a new trial of said action; and thereafter, in due time, said defendants made and filed in said action a

sufficient and proper undertaking on their said appeal. That thereafter, in due time, said defendants filed in said Supreme Court their transcript of record on appeal from said order denying their said motion for a new trial. That thereafter the questions and matters involved in said appeal were argued by the respective parties and submitted to the said Supreme Court for decision. And thereafter the said Supreme Court, to-wit on the 28th day of December, 1903, made and entered its judgment and order in said action, reversing the said order of the Superior Court denying said motion of said defendants for a new trial, except as to the issues involving the indebtedness of John S. Bell to Thomas Bell, and ordering a new trial of all issues in said action except those relating to the said indebtedness of John S. Bell to Thomas Bell.

These defendants, and each of them, further state and allege that said order and judgment of reversal has never been vacated or set aside; that the new trial ordered by the Supreme Court as aforesaid was had in said Superior Court, April 19th, 1904, to May 2nd, 1904; that the plaintiff, John S. Bell, and his grantees, the said James L. Crittenden and Catherine M. Bell, appeared, submitted to the jurisdiction of the Court, and participated in said new trial, to-wit, they introduced and submitted to the Court on said new trial all the evidence that they had introduced and submitted on the former trial of said action and more. That, thereafter, all the issues in said action, as to which a new trial was ordered as aforesaid, were by the respective parties submitted to the said Superior Court for decision; and thereafter, to-wit, on the 17th day of October, 1904, the said Superior Court made and filed its decision, wherein it decided that a lien existed upon the tract of land described in the bill of complaint herein and in the complaint and cross-complaint in said action of John S. Bell vs. George Staacke et al. in favor of the said defendant Teresa Bell as the Administratrix of the Estate of said Thomas Bell, deceased, for the payment to her, as such Administratrix, of the sum of

\$95,901.07 and accruing interest, and that said Administratrix was entitled to a judgment foreclosing said lien and directing sale to be made of said tract of land to pay the costs and expenses of said sale and the amount aforesaid of said lien. That judgment according to said decision was duly entered in said action on the 28th day of October, 1904, to-wit, judgment that there was due and owing from John S. Bell, the plaintiff, to Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, the sum of \$95,901.07, and that said sum of \$95,901.07 and the costs of said defendants, taxed at \$608.50, was a valid lien upon the tract of land described in the complaint and cross-complaint in said action, and in the bill of complaint in this action, and that the defendant George Staacke held the legal title to said land in trust, first, as security for the payment of the aforesaid sum of \$95,901.07 and said costs, and second, in trust for the use and benefit of said John S. Bell; that all said land be sold by the Commissioner therein appointed at public auction, in the manner prescribed by law, and that said Commissioner, after the time for redemption had expired, execute a deed to the purchaser of said land; that Jesse L. Hurlbut be and was appointed Commissioner of said Court to make said sale; that said Commissioner pay out of the proceeds of such sale, retaining his fees and disbursements, to said Teresa Bell as such Administratrix, the said costs and the said sum of \$95,901.07 and accruing interest; that the plaintiff and all persons claiming under him be forever barred and foreclosed of and from all equity of redemption in and to said land from and after the delivery of said Commissioner's deed; that the purchaser of said land at said Commissioner's sale be let into possession thereof; and that, if the moneys arising from said sale be insufficient to pay the amount found due said Administratrix, a judgment for such deficiency be docketed against the plaintiff John S. Bell. That said judgment described the lands to be sold, and they are the same as are described in the bill of complaint in this action, and in which the plaintiff claims an undivided one-half interest.

That said Commissioner duly qualified, as required by the law and the said judgment. That the said judgment has never been vacated, set aside, modified or reversed, and the same became final and conclusive upon the parties to the said action and their assigns. That, on the — day of February, 1906, an order of sale was issued out of said Superior Court, upon said judgment and under the seal of said Court, to the said Commissioner, commanding him to sell the said tract of land in said judgment and order of sale described, accordingly as adjudged and directed by said judgment; and the said Commissioner, in pursuance of said judgment and said order of sale, did, on March the 5th, 1906, after due and legal notice given according to law, sell at public auction, at the place and hour required by law, the said tract of land and all thereof, to the highest bidder, to-wit, to said Teresa Bell, as the said Administratrix of the Estate of Thomas Bell, deceased, for the sum and amount due her by said judgment, together with said costs and the fees of said Commissioner, and all costs and expenses of said sale; and the said Commissioner thereupon, and on said 5th day of March, 1906, executed and delivered to said purchaser his certificate of said sale, and on the same day filed for record in the office of the County Recorder for said Santa Barbara County a duplicate of said certificate of sale. That thereafter, to-wit, on the 8th day of April, 1907, there having been no redemption of said lands or of any part or portion thereof, the said Commissioner made, executed and delivered to said purchaser, to-wit, the said Teresa Bell as the Administratrix of the Estate of said Thomas Bell, deceased, a deed of conveyance of all said tract of land, and said Administratrix thereupon immediately entered into the possession of all said land, except the ranch residence, one corral and the garden, and about thirty-five acres surrounding said residence, which said residence and garden, corral and surrounding thirty-five acres were, until January 14th, 1911, occupied by said John S. Bell and his wife, Kate M. Bell, when said Administratrix recovered possession thereof by writ of assist-

ance issued in said Superior Court in favor of said Teresa Bell as such Administratrix; and said Administratrix has ever since continued in the possession of the said lands and all thereof. That the said Administratrix, after the delivery of said certificate of sale to her as aforesaid, to-wit, on March 16th, 1906, notified all the tenants of said John S. Bell, and of his grantees, the said James L. Crittenden and Catherine M. Bell, alias Kate M. Bell, and the U. S. Oil & Land Company, of the fact that she held said certificate of sale, and demanded of said tenants the rents of said lands, and the said tenants and each and all thereof attorned to said Administratrix and paid to said Administratrix all the rents of said land falling due thereafter, to-wit, the rents of all said tract of land, except of the ranch residence and small portion of the land occupied as aforesaid by John S. Bell and his said wife; and said Administratrix ever since has been in the quiet and peaceable possession of all that portion of said tract of land occupied by said tenants who attorned to her as aforesaid.

These defendants, and each of them, further answering, deny that the said Superior Court in and for the County of Santa Barbara, or the Judge of said Court, in that action wherein Kate M. Bell et al. were plaintiffs and the San Francisco Savings Union et al. were defendants, being action No. 4424 in said Court, ever made the decision in the words and figures as alleged in paragraph 10th of complainant's bill of complaint. These defendants, and each of them, admit that the said Court, after a trial of the issues raised by the pleadings in said action No. 4424, on March 14th, 1905, made and filed its decision consisting of Findings of Fact and Conclusions of Law; but they deny that the facts were found as alleged in paragraph 10th of said bill of complaint; and these defendants, as and for a part of their answer, refer to the said decision and the judgment in said action and make the same and each and all thereof a part of this their answer to the complainant's bill of complaint.

These defendants, and each of them, deny that said

Teresa Bell, as Administratrix or otherwise, ever appealed to the Supreme Court of California from the judgment entered in said action No. 4424; but they admit that said Teresa Bell, as the Administratrix of the Estate of Thomas Bell, deceased, appealed from a portion of said judgment, to-wit, from all thereof except that portion which adjudged that the plaintiffs Kate M. Bell and James L. Crittenden and defendant to cross-complaint, U. S. Oil & Land Company, jointly and severally, take nothing by said action.

These defendants, and each of them, deny that Teresa Bell, as such Administratrix or otherwise, voluntarily paid to the said Mercantile Trust Company and San Francisco Savings Union or to either, the sum of \$179,400.40, or any part thereof, but allege that said sum of \$179,400.40 was paid to the San Francisco Savings Union on June 15th, 1908, upon an order of Court as hereinafter alleged, and that, long prior to that date, to-wit, on the 6th day of March, 1907, the said Estate of Thomas Bell, deceased, had become and ever since remained the owner of the said parcel of land containing 10,067.2 acres, by deed of conveyance by the Commissioner appointed to sell said land under the decree and order of sale entered in said action of John S. Bell vs. George Staacke et al, to said Teresa Bell, as such Administratrix, as hereinbefore in this answer alleged.

These defendants, and each of them, state and allege that, prior to making the payment of said \$179,400.40, to-wit, on the 12th day of June, 1908, the Superior Court of the City and County of San Francisco, State of California, made and entered its order and judgment in the matter of the said Estate of Thomas Bell, deceased, whereby it ordered and adjudged that Teresa Bell as such Administratrix pay from the money and funds of the said Estate the sum of \$179,411.40 to said San Francisco Savings Union, in discharge and settlement of the amount due said San Francisco Savings Union on its said secured claim proved and allowed against said Estate and in satisfaction of the said judgment entered in said action No. 4424.

These defendants, and each of them, allege that the said sum of \$179,400.40 was paid by said Teresa Bell as such Administratrix from the moneys and funds of said estate, in accordance with the said judgment and order of said Superior Court in and for the City and County of San Francisco, and in accordance with said judgment entered in said action No. 4424, and to redeem the property of said estate, to-wit, said parcel of land of 10,067.2 acres, from the lien of said judgment entered in said action No. 4424; and the said San Francisco Savings Union, upon its receipt of the said sum of \$179,411.40, made, executed and delivered to said Teresa Bell, as such Administratrix, a deed of re-conveyance of all the land embraced in its said mortgage, to-wit, the 4000 acre tract and the said tract of 10,067.2 acres.

These defendants, and each of them, deny that said payment made as aforesaid by said Teresa Bell as such Administratrix was made with the intent, object and design, or with the intent, or object, or design, of depriving plaintiff of its right and interest, or right or interest, of, in and to, or of, or in, or to said undivided one-half of 10,067.2 acres of land, or of any part or portion thereof, or of its right, interest and equity, or right or interest or equity, in and to, or in or to, such portion of the proceeds of the sale of said 10,067.2 acres of land as should or would remain after the sale of said lands by said Mercantile Trust Company under said judgment in said action No. 4424.

XIV. These defendants, and each of them, deny that the said Teresa Bell, as Administratrix with the Will annexed of the Estate of Thomas Bell, deceased, has volunteered to pay to the defendant the Mercantile Trust Company of San Francisco and to the defendant San Francisco Savings Union, or to either of them, the sum of \$179,411.40; but these defendants, and each of them, allege that the said Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, acting under and in accordance with an order made by the said Superior Court of the said City

and County of San Francisco, in the matter of the Estate of Thomas Bell, deceased, paid to the defendant the San Francisco Savings Union the sum of \$179,411.40; that the said sum of \$179,411.40 was the amount ascertained and adjudged to be due the said San Francisco Savings Union by said Superior Court in said action No. 4424, referred to in the bill of complaint of the complainant herein, in the decree of foreclosure made and entered by the said Superior Court in the said action upon the cross-complaint of the defendants therein, foreclosing a mortgage which the said San Francisco Savings Union held as security for the payment of the said sum last mentioned, upon two certain tracts of land situate in the County of Santa Barbara, State of California, one of which tracts was described in the said judgment of foreclosure as containing 4000 acres, and the other was described in said judgment of foreclosure as containing 10,067.2 acres, the latter tract being the same tract or parcel of land in which the complainant herein, in its bill of complaint, claims an undivided one-half; that the said tract of 4000 acres was the property of the said Thomas Bell, deceased, at the date of his death, and remained as the property of his estate at the time the said decree of foreclosure aforesaid was entered; that, at the time the said decree of foreclosure was entered, the said other tract of land, to-wit, the said tract of land containing 10,067.2 acres, had become and was the property, as hereinbefore alleged, of the Estate of Thomas Bell, deceased; that the Estate of Thomas Bell, deceased, owning the said tract of land containing 10,067.2 acres, was entitled to have the judgment aforesaid of the said Superior Court foreclosing the said mortgage and directing the sale of both said tracts paid and satisfied with the moneys of the said estate, and the costs and expenses of foreclosure sale thereby saved, and to that end and for that purpose, the order aforesaid of the said Superior Court of the City and County of San Francisco having charge of the settlement of the Estate of Thomas Bell, deceased, made its order aforesaid directing the said Teresa Bell, as

the Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, to pay from the moneys of the said estate the amount aforesaid of \$179,411.40, due under the said judgment of foreclosure, to the said San Francisco Savings Union.

XV. These defendants, and each of them, deny that the making and execution of the said re-conveyance by the said Mercantile Trust Company and the San Francisco Savings Union was contrary to, or in violation of, the judgment in said action No. 4424, or of any of its provisions, or of any trust therein adjudged or declared; and they and each of them deny that the said re-conveyance was wrongful, fraudulent and unlawful, or wrongful or fraudulent or unlawful or in violation of any rights or interests of the U. S. Oil & Land Company under said judgment and decree in said action No. 4424, or at all, or under said judgment dated June 29th, 1901; these defendants, and each of them, deny that the said transfer by said Mercantile Trust Company of San Francisco to Teresa Bell as Administratrix of the Estate of Thomas Bell, deceased, with the Will annexed, to-wit, the said re-conveyance, was made under or in pursuance of any combination and conspiracy, or combination or conspiracy, entered into by the said Mercantile Trust Company, San Francisco Savings Union and said Teresa Bell, with the wrongful, unlawful and fraudulent intent, object, purpose and design, or wrongful or unlawful or fraudulent intent or object or purpose or design, to defraud the said U. S. Oil & Land Company out of any right, title or interest in said 10,067.2 acres of land, or out of any right of the said U. S. Oil & Land Company, title or interest in or to the proceeds of the sale of said land remaining after the payment of the sums of money ordered by said decree to be paid; and they and each of them deny that the said U. S. Oil & Land Company had any right, title or interest whatever, at the date of the said re-conveyance by the said San Francisco Savings Union and the said Mercantile Trust Company, in the said tract of 10,067.2 acres of land, or in any part or portion thereof; and

they and each of them deny that the said transfer, to-wit, the said re-conveyance made by the said Mercantile Trust Company and the San Francisco Savings Union, was made with any intent or purpose to evade and defeat, or evade or defeat, the provisions of said judgment and decree in said action No. 4424; and they and each of them deny that the said transfer was made secretly or in pursuance and execution of any combination or conspiracy, or with any fraudulent intents, objects, purposes or designs whatever; and these defendants, and each of them, deny that the said Teresa Bell, the Mercantile Trust Company and the San Francisco Savings Union knew, or that each or any of them knew, at the time of the said transfer and of the payment of the said sum of \$179,400.40, that said tract of land of 10,067.2 acres was worth, and of the value of, at least \$500,000, or of any greater value than \$100,000, or that they knew that the development of oil near or adjoining said lands made them prospectively worth \$1,000,000 or more; they and each of them deny that the said transfer was a fraud upon the U. S. Oil & Land Company and contrary to, or in violation of, the said decree in said action No. 4424; they and each of them deny that the defendants in this action wrongfully and unlawfully, or wrongfully or unlawfully claim and assert, or claim or assert, that the said deed and conveyance of May 26th, 1908, transferred and vested in said Teresa Bell as such Administratrix the title of, in and to said tract of land consisting of 10,067.2 acres; and they and each of them deny that the said claim of the defendants in this action was without merit or wrongful or unlawful or contrary to, or in conflict with, said judgment in said action No. 4424, or a fraud upon the complainant in this action, or was or is made with the wrongful or fraudulent or unlawful intents, purposes or designs of defrauding the said U. S. Oil & Land Company, or its successors or grantees, out of its interest in or title to an undivided one-half of said 10,067.2 acres of land; they and each of them deny that the said Mercantile Trust Company was required, in or by said decree in

said action No. 4424, to advertise the said 10,067.2 acres of land, or sell or offer for sale the same when the money due the San Francisco Savings Union, under the provisions of the judgment in said action No. 4424, was tendered to and paid to the said San Francisco Savings Union by the owner of the lands described in said judgment of foreclosure; and they and each of them deny that the said Mercantile Trust Company has wholly or at all failed or neglected to perform its duties as trustee under said decree in said action No. 4424, or has attempted to transfer and dispose of the said tract of 10,067.2 acres of land contrary to, or in violation of, any trust declared or set forth in said decree in said action No. 4424, or with any wrongful or unlawful or fraudulent intents, objects, purposes or designs whatever; these defendants, and each of them, deny that the said George Staacke had any right, title or interest whatever in or to the said 10,067.2 acres of land, or in or to any portion thereof, at the time of the rendition of the said judgment in the said action No. 4424.

XVI. These defendants, and each of them, deny, upon information and belief, that the San Luis Land and Improvement Company is a corporation, and deny, upon like information and belief, that the San Luis Land and Improvement Company, for a valuable consideration sold, granted, transferred and conveyed, in fee simple or otherwise, to the complainant U. S. Oil & Land Company, by good and sufficient deed and conveyance, or otherwise, an undivided one-half of said 10,067.2 acres of land; and these defendants, and each of them, allege upon information and belief, that the San Luis Land and Improvement Company and the said U. S. Oil & Land Company, and each thereof, are fictitious and sham corporations, and have no property, organization or identity, except the name; and these defendants, and each of them, allege, upon information and belief, that a name and semblance of organization was given the said U. S. Oil & Land Company and the San Luis Land and Improvement Company by James L. Crittenden, the grantee of the said John S. Bell, and

that the said James L. Crittenden has used the names U. S. Oil & Land Company and San Luis Land and Improvement Company whenever it suited his purpose to make or assert any claims upon or in reference to the said 10,067.2 acres; and these defendants, and each of them, allege, upon information and belief, that the said James L. Crittenden is the actual complainant in this action, and that he is using the name U. S. Oil & Land Company for the complainant instead of his own.

XVII. These defendants, and each of them, have no information or belief on the subject sufficient to enable them to answer the allegations made upon pages 105, 106 and 107 of the bill of complaint herein to the effect that John S. Bell, on the 22nd day of December, 1906, for a valuable consideration, conveyed to Catherine M. Bell the said tract of 10,067.2 acres, and that said John S. Bell and Catherine M. Bell, on the 12th day of June, 1897, for valuable consideration, conveyed to James L. Crittenden and Sidney M. Van Wyck, Jr., an undivided one-half of said tract of land, and that, on the 7th day of March, 1899, for a valuable consideration, the said Sidney M. Van Wyck, Jr., conveyed to James L. Crittenden all his right, title and interest in said tract of land; and, basing their denial upon that ground, they and each of them deny that the said tract of land of 10,067.2 acres or any part thereof, or any interest therein, was ever, for a valuable consideration, or for any consideration, sold, transferred or conveyed by deed of conveyance, or otherwise, by John S. Bell to Catherine M. Bell, or John S. Bell and Catherine M. Bell to James L. Crittenden, or by James L. Crittenden and Nina D. Crittenden to U. S. Oil & Land Company, or by John S. Bell to James L. Crittenden and Sidney M. Van Wyck, Jr., or by Sidney M. Van Wyck, Jr. to James L. Crittenden; and these defendants, and each of them, deny that any deeds of conveyance have been executed and recorded by said John S. Bell and Catherine M. Bell, Sidney M. Van Wyck, Jr., and James L. Crittenden and Nina D. Crittenden, U. S. Oil & Land Company and San Luis Land and Improvement Company,

or any of them, which granted and conveyed an undivided one-half of said tract of 10,067.2 acres of land.

XVIII. These defendants, and each of them, deny that the said George Henry Howard and O. H. Harshbarger, or either of them, had notice or knowledge, at any time, of any title or interest of the complainant in or to an undivided one-half of said 10,067.2 acres of land, or that they, or that either of them, at any time, had any notice or knowledge that the said tract of land had been or was deeded or conveyed by Dwight W. Grover and Samuel Rosener for the benefit of John S. Bell, or that John S. Bell was then the owner thereof, or that said Grover and Rosener had, on and prior to March 7th, 1889, agreed to convey said tract of land to said John S. Bell, or that said George Staacke paid no consideration whatever for said tract of land, or that said George Staacke received and executed said deed of conveyance and held the title to said tract of land as trustee.

These defendants, and each of them, deny that George Staacke received and accepted any deed of conveyance by Dwight W. Grover and Samuel Rosener and held the title to said 10,067.2 acres of land as trustee for the benefit of John S. Bell, from the time he received the same to the time of his death, or for or during any time whatever; and deny that the deed of conveyance by said Howard to said Harshbarger was made with the or any fraudulent or unlawful intent, object or purpose or design, to defeat any trust upon which said land had been conveyed by said Grover and Rosener to said George Staacke, or to deprive the plaintiff or the successors in interest of John S. Bell of the benefits of any trust or of their rights thereunder.

These defendants, and each of them, deny that each and all of the defendants in this action, or that any of them, ever had any notice that the judgment alleged to have been made and filed on the 29th day of June, 1901, in the action entitled "John S. Bell vs. George Staacke et al.," was a valid, subsisting or final judgment, or that the Findings made and filed in said action, March

6th, 1901, were valid, conclusive or final, or of any right, title or interest of the complainant of, in or to an undivided one-half of said tract of 10,067.2 acres of land.

These defendants, and each of them, deny that the defendants W. P. Hammon and F. C. Van Deinse did, on or about the 1st day of June, 1911, or at any time, wrongfully or unlawfully enter upon a portion of said lands, or bore a well for the purpose of extracting oil from said land, with the wrongful and unlawful intent, object, purpose and design, or that the complainant suffered any loss thereby or was damaged or injured thereby; and deny that the defendants W. P. Hammon and F. C. Van Deinse threaten or are about to bore, or cause to be bored, other wells, with any wrongful and unlawful intent, object, purpose and design; and deny that the extraction of oil from said land, of the sale thereof, by said Hammon or Van Deinse, or both, will damage or injure the complainant.

These defendants, and each of them, deny that Teresa Bell, as such Administratrix, or otherwise, wrongfully or unlawfully claims or asserts that she has acquired title to said 10,067.2 acres of land, and deny that the complainant is, or ever was, entitled to any of the rents, issues or profits of said land, or of any part thereof; and deny that the appropriation by Teresa Bell, as such Administratrix, of any or of all the rents, income and profits of said land will cause any loss, injury or damage to the complainant.

XIX. These defendants, and each of them, deny that, on or about the 20th day of May, 1908, or at any time, the said Teresa Bell, Mercantile Trust Company, and San Francisco Savings Union combined and conspired together, and made and entered into a secret combination and conspiracy, or combination, or conspired together, or made or entered into a secret combination or conspiracy, to evade and defeat, or evade or defeat, the decree in said action No. 4424, or to deprive the complainant of any right, title or interest in or to an undivided one-half of said tract of 10,067.2 acres of land, or of any interest in, or part of the pro-

ceeds that might be obtained by a sale of said land, or that they did, in pursuance of said alleged combination and conspiracy, or with the wrongful, unlawful and fraudulent intent, object, purpose and design of evading or defeating said decree in said action No. 4424, or of depriving said complainant of any right, title and interest in and to an undivided one-half of said tract of land, or any product of the sale thereof under said decree, have and cause said deed dated May 26th, 1908, to be made and executed and recorded; and deny that said deed dated May 26th, 1908, was made by said Mercantile Trust Company and San Francisco Savings Union, or by either of them, under or in pursuance of, or execution of, any wrongful or unlawful combination or conspiracy, or in pursuance or execution of any conspiracy or combination whatever.

These defendants, and each of them, deny that C. A. Hunt has in his possession or under his control the deed of conveyance made and executed by George Staacke to Catherine M. Bell and James M. Crittenden; and these defendants, and each of them, allege that the said deed of conveyance has served the purpose for which it was executed and deposited with said Clerk of the Court, as hereinbefore in this answer alleged, and is now of no effect or validity.

XX. Answering further, these defendants, and each of them, allege that each and every claim and all the right, title and interest that the complainant herein ever had or asserted against, in, or to the said tract of 10,067.2 acres of land were disposed of against the complainant and its grantors by the final judgments of the Superior Court of the State of California, in and for the County of Santa Barbara, in the said two actions entitled "John S. Bell vs. George Staacke et al." and "Kate M. Bell, John S. Bell and James L. Crittenden, et al., vs. San Francisco Savings Union et al.," respectively, and by the sale under the foreclosure decree and order of sale issued thereon in the said action entitled "John S. Bell vs. George Staacke et al.," as hereinbefore in this answer alleged; but, notwithstanding that

the said claims and asserted rights and interests of the complainant in and to the said tract of 10.067.2 acres were finally adjudicated, determined and disposed of, as hereinbefore alleged, against the complainant, the said complainant has continued to assert the said claims and harass the defendants in this action by bringing suit after suit upon said claims in the said Superior Court of the State of California, in and for the County of Santa Barbara, to-wit, the said U. S. Oil & Land Company, by its Attorney James L. Crittenden, commenced an action in the said Superior Court on the 9th day of March, 1910, against these defendants and the other defendants named herein, by filing a complaint therein which asserted substantially the same alleged cause of action as is asserted by the bill of complaint herein, and in which the same relief was asked and as is prayed for in the bill of complaint herein; that these defendants appeared in said action in the said Superior Court and made, served and filed their answer therein on the 9th day of April, 1910, and caused the said action to be set for trial on a day certain by the said Superior Court, at the City of Santa Barbara, State of California, to-wit, on the — day of —, 1910; that, on said day that the said action was set for trial as aforesaid, these defendants, by their counsel, appeared in said Court ready for trial; that, a few minutes before the said action was called for trial by the Judge of the said Superior Court, the said U. S. Oil & Land Company, by its attorneys the said James L. Crittenden and Richards and Carrier, filed and procured to be entered in the Clerk's office of said Court a dismissal of the said action; that the action so dismissed was numbered 7480 of said Superior Court.

That the said U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards and Carrier, on the 4th day of March, 1911, began another action against these defendants and the other defendants named in the bill of complaint herein, by filing a complaint in the Clerk's office of the said Court, which complaint set forth and alleged the same cause of action as was alleged in the previous action, to-wit, in the action

No. 7480, and as is alleged in the bill of complaint herein. Said second action in said Superior Court was numbered 7787. That these defendants entered their appearance in the said action No. 7787 in the said Superior Court, and filed therein, on the 29th day of July, 1911, their answer, which answer set up the defense of res judicata in the final judgments in the said actions entitled "John S. Bell vs. George Staacke et al.," and "Kate M. Bell et al. vs. San Francisco Savings Union et al.," and the sale and conveyance of said tract of 10,067.2 acres under the decree and order of sale in the action entitled "John S. Bell vs. George Staacke et al.," and these defendants thereupon caused the said action No. 7787 to be set for trial on a day certain by said Superior Court, to-wit: on the 17th day of October, 1911; that on the said 17th day of October, 1911, these defendants appeared in the said Superior Court, at the City of Santa Barbara, ready for the trial of said action; that, a few minutes before the said action was called for trial by the Judge of the said Superior Court, the said attorneys for the said U. S. Oil & Land Company filed, in the name of said U. S. Oil & Land Company, in said Court, a dismissal of the said action and caused such dismissal to be entered; that the defense of these defendants interposed to said action No. 7787 in said Superior Court was the same as the defense interposed as aforesaid in said action No. 7480 of said Superior Court.

These defendants, and each of them, upon information and belief, allege that the U. S. Oil & Land Company named as complainant herein is not a corporation, but is given the name and semblance of a corporation by the said attorneys James L. Crittenden and Richards and Carrier.

XXI. These defendants, and each of them, further answering, state and allege that the cause of action alleged in the bill of complaint, and each and all of the matters alleged therein as ground for relief, are stale and are barred by the Statutes of Limitation.

Wherefore these defendants, and each of them, having fully answered the bill of complaint, pray that the

Court will ascertain and determine that the complainant is not entitled to any relief; that decree be entered dismissing the said bill of complaint; that the Court make its decree in favor of these defendants and of each of them; enjoining the complainant and its attorneys, the said James L. Crittenden and the said Richards and Carrier, and each and all of its agents, from bringing any other or further action or actions or proceedings upon any of the matters alleged and complained of in the bill of complaint; and that these defendants recover their costs; and that the Court will grant unto these defendants, and to each of them, such other or further relief as they may be entitled to in the premises.

W. E. Bell, also known as Eustace Bell,
Defendant.

Peter J. Crosby,
Solicitor for said defendants Thomas Frederick Bell;
Bessie M. Bell, wife of Thomas Frederick Bell, also
known as Elizabeth M. Bell; W. E. Bell, also known
as Eustace Bell; Reginald Bell, John Lewellyn Au-
zerais, and Peter J. Crosby.

State of California, City and County of San Fran-
cisco, ss.

W. E. Bell, also known as Eustace Bell, being duly
sworn, deposes and says:

That he is a defendant in the above entitled cause:
that he has heard read the foregoing answer to the bill
of complaint, and knows the contents thereof; that the
same is true of his own knowledge, except as to matters
therein stated upon information and belief, and as to
those matters he believes it to be true.

Subscribed and sworn to before me this 31st day of
May, 1912.

W. E. Bell, also known as Eustace Bell.

Edith W. Burnham,

Notary Public in and for the City and County of San
Francisco, State of California.

(Seal)

(Endorsed.) Filed June 3, 1912. Wm. M. Van
Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

The joint and several demurrers of the above named defendants, W. P. Hamman and F. C. Van Deinse, to the bill of complaint of the above named complainant, U. S. Oil & Land Company.

These defendants, respectively, by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto and for cause of demurrer sheweth:

That the said complainant has not made or stated any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants, respectively.

Wherefore, and for divers other good causes of demurrer, these defendants, respectively, demur to the said bill of complaint and humbly demand the judgment of this Court whether they or either of them shall be compelled to make any further or other answer thereto.

Chauncey S. Goodrich,

Solicitor for said Defendants.

Northern District of California, City and County of San Francisco, ss.

A. E. Boynton makes solemn oath and says: That he is the attorney in fact of W. P. Hammon, one of the defendants above named; that the said W. P. Hammon and F. C. Van Deinse, another of the defendants above named, are at the present time without the United States and in Europe, and for that reason affiant makes this affidavit on behalf of the said W. P. Hammon; and affiant further says that the foregoing demurrer is not interposed for delay and that the same is true in point of law.

A. E. Boynton.

Subscribed and sworn to before me this 31st day of May, A. D. 1912.

Anne F. Hasty,

Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Chauncey S. Goodrich.

Service of the within demurrer, and receipt of a copy thereof, is hereby admitted this 3rd day of June, A. D. 1912.

Richards & Carrier, James L. Crittenden,
Solicitors for Complainant.

Barclay Henley, of Counsel.

(Endorsed.) Filed June 3, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Replication.

The replication of U. S. Oil & Land Company, above-named complainant, to the answer of the defendants hereinafter in this replication named:

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendants Teresa Bell as Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard as the Executor of the will of George Staacke, deceased; Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto,

confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed.

June 25, 1912.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley, of Counsel for Complainant.

The United States of America, State of California,
City and County of San Francisco, ss.

On this twenty-sixth day of June, 1912, before me personally appeared Alfred D. Crittenden, the Secretary and an officer of the U. S. Oil & Land Company, the above named complainant, and made solemn oath that he has read the foregoing Replication and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters, he believes it to be true; and that this verification is not made by the complainant because complainant is a corporation and is made by deponent because he is the Secretary and an officer of said corporation.

Alfred D. Crittenden.

Subscribed and sworn to before me this 26th day of June, 1912, at and in said City and County of San Francisco.

Flora Hall,
Notary Public in and for the City and County of San
Francisco, State of California.
(Seal)

(Endorsed.) Filed June 27, 1912. Wm. W. Van
Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Replication.

The replication of U. S. Oil & Land Company, above-named complainant, to the answer of the defendants hereinafter in this replication named:

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendants Thomas Frederick Bell; Bessie M. Bell, wife of Thomas Frederick Bell and also known as Elizabeth M. Bell; W. E. Bell, also known as Eustace Bell; Reginald Bell, John Lewellyn Auzerais and Peter J. Crosby, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed.

June 25, 1912.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley, of Counsel for Complainant.

The United States of America, State of California,
City and County of San Francisco, ss.

On this twenty-sixth day of June, 1912, before me personally appeared Alfred D. Crittenden, the Secretary and an officer of the U. S. Oil & Land Company, the above-named complainant, and made solemn oath that he has read the foregoing Replication and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters, he believes it to be true; and that this verification is not made by the complainant because complainant is a corporation and is made by deponent because he is the Secretary and an officer of said corporation.

Alfred Crittenden.

Subscribed and sworn to before me this 26th day of June, 1912, at and in said City and County of San Francisco.

Flora Hall,
Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

(Endorsed.) Filed June 27, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Answer of Defendant Associated Oil Company to the Bill of Complaint of the U. S. Oil & Land Company.

This defendant Associated Oil Company now, and at all times, saving and reserving unto itself all and all manner of benefit and advantage of exception that can or may be had or taken to the manifold errors, inaccuracies and insufficiencies in the said Bill of Complaint contained, for answer thereunto, or to so much and such parts thereof as it is advised it is material or necessary to make answer unto, answering, says:

I. This defendant denies upon information and belief that the complainant is the owner in fee simple absolute of an undivided one-half, or of any part, or of all or any part of that certain tract, piece and parcel of land, situate, lying and being in the County of Santa Barbara, State of California, consisting of 10,067.2 acres, in said Bill of Complaint described.

II. This defendant admits that it claims and asserts an estate or interest in said tract, piece and parcel of land adverse to the complainant, but denies that said claim is without any right whatever, or that this defendant has not any right, title, estate or interest whatsoever in or to the undivided one-half of said tract, piece and parcel of land, or in or to any part or portion thereof.

III. This defendant, further answering, denies on information and belief that the judgment rendered by the Superior Court of the County of Santa Barbara, State of California, on the 29th day of June, 1901, in the action then pending in said Superior Court, entitled

"John S. Bell, plaintiff, vs. George Staacke and J. W. C. Maxwell, executors of the will of Thomas Bell, deceased, et al., defendants," is still in full force, or at all in force, or that said judgment is a final adjudication of the rights and interest, or rights or interest of the parties to said action in which it was rendered and entered, or that the findings of fact or conclusions of law, or the decision of said Superior Court in said action of John S. Bell vs. George Staacke et al. on the 9th day of July, 1901, became or that same, or any thereof, ever since have been final or conclusive or binding upon all or any of the parties to said action, or their or any of their successors in interest, or upon each, any or all of the heirs of said Thomas Bell, deceased, or that the jurisdiction or power of said Superior Court to hear or grant any motion for a new trial in said action was then terminated forever, or at all, or then or at all ceased to exist, or that the said Superior Court, or any or all Appellate Courts of the State of California, or the Supreme Court of the State of California lost or ceased to have any jurisdiction whatsoever to entertain, hear, pass upon or review any notice of intention to move for a new trial, or any motion for a new trial in said action, or any order made on any such notice or motion, or to modify, alter or change in any way or manner or respect said judgment of said Superior Court.

IV. This defendant further answering, denies on information and belief that the payment alleged in the eleventh paragraph of said Bill of Complaint to have been made by said Teresa Bell, as administratrix with the Will annexed of the Estate of said Thomas Bell, deceased, to said San Francisco Savings Union and said Mercantile Trust Company of San Francisco, was made with the intent, object, purpose or design of depriving the complainant of its right or interest in or to said undivided one-half of said 10,067.2 acres of land, or of its right, interest or equity in or to such portion of the proceeds of the sale of said 10,067.2 acres of land as should or would remain after the sale of said lands by said Mercantile Trust Company of San Francisco under

and in accordance with said judgment and decree in said action No. 4424; or that with such intent, purpose, object or design, or to obtain an unfair or unconscionable advantage over this complainant, the said Teresa Bell upon making such payment of \$179,411.40, obtained from said Mercantile Trust Company of San Francisco and from said San Francisco Savings Union, or either of them, the instrument in writing mentioned in said eleventh paragraph of said Bill of Complaint, or that the making or execution of said instrument was contrary to or in violation of said judgment in said action No. 4424, or of the provisions of said judgment, or of the trust therein adjudged and declared, or was wrongful, or fraudulent or unlawful, or in violation of the rights or interest of the complainant herein, or that said intended sale or transfer by said Mercantile Trust Company of San Francisco was made under or in pursuance of a combination or conspiracy entered into by the said Mercantile Trust Company, the said San Francisco Savings Union and said Teresa Bell, with the wrongful, unlawful or fraudulent intent, object, purpose or design to defraud said complainant out of its right, title or interest in said 10,067.2 acres of land, or out of its right, title or interest in and to the proceeds of the sale of said land remaining after the payment of the sums of money ordered by said decree to be paid, or to evade or defeat the provisions of said judgment and decree in said action No. 4424, requiring said land to be sold at public auction upon and after publication of notice of any proposed sale in certain newspapers, or that said intended sale or transfer was made in pursuance or execution of the said alleged combination or conspiracy, or with the fraudulent intents, objects, purposes, or designs aforesaid, or that said intended sale or transfer was a fraud upon said complainant or contrary to or in violation of said decree in said action No. 4424, or that this defendant wrongfully or unlawfully claims or asserts that the said deed and conveyance of May 26th, 1908, transferred or vested in said Teresa Bell, as such administratrix, the title of, in, or to said

tract of land, consisting of 10,067.2 acres, or that any claim made by this defendant is without merit, wrongful or unlawful or contrary to and in conflict with said judgment in said action No. 4424, or a fraud upon this complainant, or that any claim made by this defendant was or is made with any wrongful, fraudulent or unlawful intent, purpose or design, or with any intent, purpose or design to defraud the said complainant or its successors or grantees out of its interests in or title to an undivided one-half of said 10,067.2 acres of land, or that said George Staacke had no other right, title or interest in or to said lands or to any of the proceeds of the sale of said lands under said decree than that of Trustee for the benefit of the complainant herein, or its successors or assigns, or that any of the deeds or conveyances by said John S. Bell and Catherine M. Bell, Sidney M. Van Wyck, Jr., James L. Crittenden and Nina D. Crittenden, U. S. Land and Oil Company and San Luis Land and Improvement Company conveyed an undivided one-half of all of, or any part of that certain tract, piece or parcel of land consisting of 10,067.2 acres, described in the first paragraph of said Bill of Complaint, with the exception of the lots, pieces and parcels mentioned in said first paragraph as excepted from the 10,067.2 acre tract described therein.

V. This defendant further answering says: That it has no information or belief upon the subject sufficient to enable it to answer the allegations contained in the fourteenth paragraph of said Bill of Complaint, and on that ground this defendant denies each and every of the allegations in said fourteenth paragraph contained.

VI. This defendant further answering, denies that it had notice of any right, title or interest of the complainant of, in or to an undivided one-half of said tract or piece of land consisting of 10,067.2 acres of land, or that it had such notice before it entered upon said tract of land, or paid any money or consideration for any right or interest therein or thereto.

VII. This defendant further answering, denies on information and belief that on or about the 20th day

of May, 1908, or at any other time the said Teresa Bell, Mercantile Trust Company of San Francisco and said San Francisco Savings Union combined and conspired together or made or entered into a secret combination or conspiracy to evade or defeat the said decree in said action No. 4424, or to deprive said complainant of its rights, title or interest in or to an undivided one-half of said tract of land, consisting of 10,067.2 acres, or any of its interest in or right to the proceeds or every or any part of the proceeds that might be obtained by or from the sale of said tract of 10,067.2 acres, or that they did in pursuance of any such combination or conspiracy or with wrongful or unlawful or fraudulent intent, object, purpose or design of evading or defeating said decree in said action No. 4424, or of depriving said complainant of its right, title or interest in or to an undivided one-half of said tract of land, or of any proceeds that might be obtained from the sale thereof under said decree in said action No. 4424, have or cause said deed dated May 26th, 1908, to be made or executed or thereafter recorded as shown, averred and alleged in the eleventh paragraph of said Bill of Complaint, or that said deed of May 26th, 1908, was made, executed or delivered under or in pursuance or in execution of said alleged wrongful and unlawful combination and conspiracy.

VIII. This defendant further answering, alleges: That at the time of the filing of the Bill of Complaint herein and long prior thereto this defendant was, and it now is, the owner of a license to lay, build, operate and maintain a pipe lines for the conduct of petroleum, gas, water and other liquid substances over, through, under and across those certain portions of said 10,067.2 acre tract of land, described as follows, to-wit:

1st: Commencing at a point on the northerly line of what is known as the "Teresa Bell Estate," which point is on the south line of the northeast quarter of Section 26, Township 9 N., Range 33 W., S. B. B. & M., and thence in a westerly direction from the southeast corner of said northeast quarter of Section 26, 2548 feet; thence

in a southwesterly direction 16,594 feet, more or less, to a point on the westerly line of said Teresa Bell Estate; said point being distant 4575 feet north of the southwest corner of said Teresa Bell Estate, together with the right of ingress and egress over said lands for the purpose of repairing said line.

2nd: Ten feet on each side of the following described line, to-wit: Commencing at a point 150 feet south of $\frac{1}{4}$ sec. corner between Sections 25 and 26, T. 9 N., R. 33 W., S. B. M., and on line between Union Oil Company and Associated Oil Company property, running thence first south $12^{\circ} 12'$ W., 280 feet to station 6 plus 90; thence south $40^{\circ} 29'$ W., 1599 feet; thence third south $24^{\circ} 29'$ W. 1699 feet; thence south $36^{\circ} 09'$ W. 638 feet to station 46 plus 26; thence south $11^{\circ} 39'$ W. 1150 to station 57 plus 76; thence 255 feet to station 59 plus 31, which station is identical with L. 66 plus 70 E. S. Ferguson survey; thence south $24^{\circ} 32'$ W. 530 feet to station 72 plus 00; thence south $29^{\circ} 20'$ West 10,250 feet to station 175 plus 00; thence south $33^{\circ} 52'$ W. 497 feet to station 179 plus 97, which point is on the line between Los Flores Ranch and Theresa Bell, and 4615 feet north of S. W. cor. of Theresa Bell Ranch.

Wherefore, this defendant begs to be hence dismissed with its reasonable costs and charges, in this behalf most wrongfully sustained.

Associated Oil Company,
By G. Sheridan, Secretary.
Edmund Tauszky,

Attorney for Defendant Associated Oil Company.

United States of America, Northern District of California, City and County of San Francisco, ss.

On this 28th day of June, 1912, before me personally appeared G. Sheridan, who made solemn oath that she is an officer, to-wit, Secretary, of the Associated Oil Company, the defendant named in the foregoing answer; that she has read said answer and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated on information or belief, and as to those matters that she

believes it to be true.

G. Sheridan.

Subscribed and sworn to before me, this 28th day of June, 1912.

O. A. Eggers,

Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

(Endorsed.) Filed June 29, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

The demurrer of the defendant Union Oil Company of California, to the bill of complaint of the above named complainant U. S. Oil and Land Company.

This defendant, Union Oil Company of California, a corporation, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer sheweth:

I. That the said complaint has not made, or stated, any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for against this defendant.

II. That it appears from the complainant's bill of complaint that each and all of the grounds therein alleged, and upon which relief is sought are stale, and that the same should not be entertained by a court of equity at this time.

Wherefore, for this and divers other good causes of demurrer, the defendant prays judgment of the Court whether it shall be compelled to answer, and it prays to be hence dismissed with costs.

Lewis W. Andrews,
Thos. O. Toland,

Solicitors for Defendant Union Oil Company of California, a Corporation.

Southern Division of Southern District of California,
County of Los Angeles, ss.

Giles Kellogg, the Secretary of Union Oil Company of California, a defendant, above named, makes solemn oath and says: That the foregoing demurrer is not interposed for delay, and that the same is true in point of law.

Giles Kellogg.

Subscribed and sworn to before me this 11th day of November, 1912.

Carrie M. Van Delinder,
Notary Public in and for Los Angeles County, California.

(Seal)

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Lewis W. Andrews,
Thos. O. Toland,

Solicitors for Defendant Union Oil Company of California, a Corporation.

(Endorsed.)

Filed Nov. 11, 1912. Wm. M. Van Dyke, Clerk. By Murray C. White, Deputy Clerk. Received copy of the within demurrer this 11th day of November, 1912, James L. Crittenden, Barclay Henley, Richards & Carrier, Attorney for Complainants. Lewis W. Andrews, Thos. O. Toland, Cedric E. Johnson 1100-5 Union Oil Bldg., Los Angeles, Attorneys for U. O. Co. of Cal.

(TITLE OF COURT AND CAUSE.)

Attorneys for Complainant: Richards & Carrier, James L. Crittenden and Barclay Henley.

Attorneys for Defendant: Edmund Tauszky, for Associated Oil Co.; Peter J. Crosby, for defendants Thos. F. Bell, Bessie M. Bell, W. E. Bell, Reginald Bell; John Lewellyn Auzeries and Peter J. Crosby; I. Z. Blakeman, for Teresa Bell, et al.; Chauncey S. Goodrich, for W. P. Hammon et al.; A. E. Bolton, for A. S. Holman; Charles W. Slack, for W. P. Hammon et al.; Lewis W. Andrews & Thos. O. Toland, for Union Oil Co.

A demurrer has been interposed to the bill of com-

plaint in this case on the following grounds:

1st. Because the complainant has a plain, speedy and adequate remedy at law.

2nd. Because the claim in suit is stale, and the complainant has been guilty of laches, and

3rd. Because the judgment upon which complainant bases its right to relief has been reversed by the Supreme Court of the State of California on appeal from an order refusing to grant a new trial and a judgment adverse to the complainant was rendered on the retrial, which has been affirmed by the Supreme Court of the State on appeal.

1. I am of opinion that the complainant has no adequate remedy at law in the Courts of the United States and this is the true test of equity jurisdiction in a Federal Court.

2. The suit was brought within the period limited by the statute of limitations of the State of California and there is nothing on the face of the bill to warrant the Court in curtailing the statutory period or in refusing to apply the analogy of the state statute.

3. If I felt at liberty to take judicial notice of the numerous orders and decisions that may have been entered in the Courts of California in the course of the protracted litigation referred to in the bill, I would perhaps feel constrained to hold that there is no equity in the bill and that the demurrer should be sustained. But I am satisfied I am not authorized to take judicial notice of judgments entered in the Courts of this State. Doubtless this Court will take judicial notice of the general rules of law declared by the Supreme Court of California in written opinions, but it will not take such notice of the judgment in any particular case unless properly pleaded and proved.

For the reasons thus briefly stated, I am of opinion that the grounds of the demurrer are either not well taken or are not apparent on the face of the bill and the demurrer is accordingly overruled.

Some of the defendants have answered as well as demurred and their answers will be permitted to stand.

The remaining defendants will be required to answer under the rules.

Let an order be entered accordingly.

Rudkin, Dist. Judge.

(Endorsed.) No. 140 Civil. United States District Court, Southern District of California, Southern Division. U. S. Oil and Land Company, a Corporation. Complainant, vs. Teresa Bell, et al., Defendants. Opinion on Demurrers. Filed November 19, 1912. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

At a stated term, to-wit: The July Term, A. D. 1912, of the District Court of the United States, in and for the Southern District of California, Southern Division, held in the Court Room thereof, at Los Angeles, on Wednesday, the 27th day of November, in the year of our Lord, one thousand nine hundred and twelve.

Present:

The Honorable Frank H. Rudkin, District Judge.

No. 140 Civil, S. D.

United States Oil & Land Company, Complainant

vs.

Teresa Bell, as Administratrix, etc., et al., Defendants.

This cause having heretofore been submitted to the Court on defendants' demurrer to the bill of complaint, and the Court, Hon. Frank H. Rudkin, U. S. District Judge, having heretofore on Nov. 19th, 1912, filed an opinion, holding that said demurrer should be overruled; it is now by the Court ordered, that defendants' demurrer to the bill of complaint be, and the same hereby is overruled, with leave to the defendants to answer said bill of complaint under the rules of this Court.

(Endorsed.) No. 140 Civil. United States District Court, Southern District of California, Southern Division. United States Oil & Land Company vs. Teresa Bell, etc., et al. Copy order overruling demurrer. Filed July 23, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Plea in Abatement of Defendant Union Oil Company

of California, to the Bill of Complaint of United States Oil and Land Company, a Corporation.

To the Honorable Judge of the District Court of the United States, for the Southern District of California, in and for the Southern Division:

1. This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's Bill of Complaint, mentioned and contained, to be true, in such sort, manner and form as the same are therein set forth and alleged, for plea to so much of said Bill of Complaint as is hereinafter stated, and for matter in abatement of this suit, alleges:—

2. That there was granted and conveyed to and vested in said Union Oil Company of California, by that certain deed dated and recorded, in the office of the County Recorder of Santa Barbara County in Book 118 of Deeds, at page 591, et seq., on the 15th day of June, 1908, and executed and delivered to this defendant by Teresa Bell, as the administratrix of the estate of Thomas Bell, deceased, with the will annexed, and by that certain deed dated April 27th, 1908, and recorded June 15th, 1908, in Book 118 of Deeds, at page 589, et seq., of said Santa Barbara County, California, records, and executed and delivered to this defendant by Teresa Bell, individually, and by each and all of the other heirs, devisees, legatees and persons entitled in any wise to succeed to or take the estate or any interest in the estate of said Thomas Bell, deceased, the title in fee simple absolute, together with all and singular the tenements, hereditaments and appurtenances to or of that certain tract, piece or parcel of land situate, lying and being in the County of Santa Barbara, State of California, and bounded and particularly described as follows, to-wit:—

Commencing at the southeast corner of the tract of land conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada by deed of conveyance bearing date the 16th day of August, 1867, and running thence due east to the westerly line of the tract of land conveyed by said de la Guerra to said Thomas Bell (since deceased) June

26th, 1867; thence running northerly along said westerly line to its intersection with the northern boundary line of the Rancho de Los Alamos; thence running westerly and along said northern boundary line to its intersection with the northeast corner of the said tract of land conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada; and thence running southerly along the easterly boundary line of said Jose Antonio Estrada to the place of beginning, containing about four thousand (4,000) acres of land,

And that at the time of the commencement of this suit, and for and during more than five years prior thereto this defendant Union Oil Company of California, and its predecessors in interest therein, had been and were and ever since the commencement of this suit this defendant has been, and still is, the owner in the sole and exclusive possession and entitled to the possession of the above described tract and parcel of land;

That the above described tract and parcel of land is by metes and bounds and by monuments and courses more particularly described as follows, to-wit:

Beginning at an iron pipe set in the straight line drawn and lying between Station No. 3 of Survey No. 358 of said Santa Barbara County, distant north $6^{\circ} 54' 45''$ east from said Station No. 3 of said County Survey No. 358, and a point in the northern boundary line of said Rancho de Los Alamos (also called Rancho Alamos), which point in said northern line is distant 16.97 chains west from the post or stake marked L. A. 6, of the official survey of said Rancho de Los Alamos, and running thence from said point of beginning along and with said straight line north $6^{\circ} 54' 45''$ east 16,894.98 feet to pipe in mound of rocks at said point in the northern line of said Rancho Los Alamos, distant 16.97 chains west from said stake L. A. 6 of the official survey of said rancho; thence along and with said northern boundary line of said Rancho Los Alamos north $89^{\circ} 40' 51''$ west 1,523.68 feet to spike in live oak tree marked L. A. No. 7; thence north $0^{\circ} 15' 9''$ east 2,646.8 feet to an iron corner post; thence north $89^{\circ} 46' 34''$ west 5,274.82 feet

to old 4"x4" stake; thence north $0^{\circ} 17' 26''$ east 2,646.2 feet to 1" galvanized iron pipe; thence north $89^{\circ} 40' 44''$ west 2,599.01 feet to an iron pipe set at old 4"x4" redwood stake marked E. 6 R. 151 and F. F. F., and set in boundary line between Stations L. A. 10 and L. A. 11 of the official survey of said rancho and thence leaving said northern boundary of said rancho south $1^{\circ} 26' 43''$ west to said southeast corner of said tract of land, conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada, by said deed of conveyance bearing date the 16th day of August, 1867, and thence due east 7,895.4 feet to said iron pipe set at said point of commencement, containing 3,997.33 acres, according to survey and map thereof made in March, 1908, and filed in the office of said County Recorder of said Santa Barbara County, on March 25th, 1908, and pasted in Book 4, page 81 of Maps and Surveys, in said Recorder's office.

3. That said line extending from said iron pipe at said point of commencement in said particular description of said tract of 3,997.33 acres to said iron pipe in mound of rocks at said point in the northern boundary of said Rancho de Los Alamos distant 16.97 chains west from said stake L. A. 6, of the official survey of said Rancho de Los Alamos is identical and co-incidental with a portion of the west boundary of the tract of land containing 10,067.2 acres, referred to and described and alleged to be owned in fee simple by said complainant, in the subdivision 1st of said Bill of Complaint; that said tract of land containing 3997.33 acres lies west of and on its easterly side is bounded by said line 16,894.98 feet long, and that said tract of land alleged in said Bill of Complaint to contain 10,067.2 acres lies to the east of, and on its westerly side is bounded by said last named line, and that said tract of 3,997.33 acres is wholly exterior to and does not coincide to any extent whatever with said tract of land so alleged to contain 10,067.2 acres or any part thereof.

4. This defendant alleges that it does not own or claim any land easterly of said line last hereinabove described or any interest therein, except such rights of way

in public and private roads and other servitudes thereon as exist and have existed from time immemorial as appurtenant and belonging to said tract of 3,997.33 acres, and denies that said complainant owns or is in any manner interested in either the whole or any part of said tract of 3,997.33 acres of land bounded on the east by, and lying adjacent to and to the west of said last named line.

All of which matters and things this defendant avers to be true and pleads the said facts to the said complainant's bill and prays the judgment of this Honorable Court whether this defendant Union Oil Company of California ought to be required to make any other or further answer to the said bill.

Union Oil Company of California,
By Lewis W. Andrews and Thos. O. Toland,
Its Solicitors.

Southern Division of Southern District of California,
State of California, County of Los Angeles, ss.

Giles Kellogg, Secretary of Union Oil Company of California, a corporation defendant above named, makes solemn oath and says:

That he is such secretary; that the foregoing plea is not interposed for delay, and that the same is true in point of fact.

Giles Kellogg,
Secretary of said Corporation Defendant.

Subscribed in my presence and sworn to before me
this 11th day of November, 1912.

(Seal)

Carrie M. Van Delinder,
Notary Public in and for the County of Los Angeles,
State of California.

The undersigned solicitors for said defendant Union Oil Company of California do hereby certify that in their opinion the foregoing plea is well founded in point of law.

Thos. O. Toland
Lewis W. Andrews,
Solicitors for said Defendant Union Oil Company of
California.

(Endorsed.) Filed Dec. 2, 1912. Wm. M. Van Dyke, Clerk By Chas. N. Williams, Deputy Clerk. Received copy of the within plea this 11th day of November, 1912. James L. Crittenden, Barclay Henley, Richards & Carrier, Attorney for Complainant. Lewis W. Andrews, Thos. O. Toland, 1100-5 Union Oil Bldg., Los Angeles, Attorneys for Union Oil Co. of Cal.

(TITLE OF COURT AND CAUSE.)

**JOINT AND SEVERAL PLEA OF
W. P. HAMMON AND F. C. VAN DEINSE.**

The joint and several plea of the above named defendants, W. P. Hammon and F. C. van Deirse, to the bill of complaint of the above named complainant U. S. Oil & Land Company:

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, for plea to the whole of the said bill of complaint say:

I. That subsequent to the 6th day of March, 1901, and within the time and in the manner permitted and prescribed by the laws of the State of California, George Staacke, individually and Teresa Bell, as special administratrix of the Estate of Thomas Bell, deceased, defendants in the action mentioned and described in paragraph "7th" of the said bill of complaint, gave notice of their intention to move for a new trial of the said action; that thereafter on the 7th day of June, 1901, the said motion for a new trial was made by the said defendants in the said action, and thereupon and on the said day the Superior Court of the State of California, in and for the County of Santa Barbara, made and entered in the said action its order denying the said motion; that thereafter, on the 8th day of June, 1901, and synchronously with the service and filing of their notice of appeal from the decree in the said action, mentioned and described in paragraph "8th" of the said bill of complaint, and within the time and in the manner permitted and prescribed by

the laws of the State of California, the said George Staacke, individually, and Teresa Bell, as special administratrix of the Estate of Thomas Bell, deceased, served and filed in the said action their notice of appeal to the Supreme Court of the State of California from the said order denying their said motion for a new trial, and thereafter prosecuted such appeal; that thereafter and prior to the 16th day of September, 1902, John S. Bell, the plaintiff in the said action and the respondent to both the said appeals, moved the said Supreme Court of the State of California to dismiss both the said appeals; that the said Supreme Court on the 16th day of September, 1902, after hearing of the said motions of the said plaintiff and respondent, made and entered its order and judgment dismissing the said appeal from the decree in the said action, on the sole ground that notice of such appeal had been prematurely given by the appellants, but denying the said motion to dismiss the said appeal from the said order denying the said motion for a new trial of the said action; that thereafter the said defendants continued to prosecute their said appeal from the said order denying the said motion for a new trial of the said action; that on the 30th day of November, 1903, after hearing of the said appeal, the said Supreme Court of the State of California made and entered its order and judgment reversing the said order denying the said motion for a new trial and remanding the said action to the said Superior Court of the State of California, in and for the County of Santa Barbara; that on the 28th day of December, 1903, the said Supreme Court amended its said judgment reversing the said order by its judgment and decree then made and entered, so that the said order and judgment, as so amended on the said 28th day of December, 1903, was and is in the words and figures as follows:

"IN THE SUPREME COURT OF THE STATE
OF CALIFORNIA.

L. A. No. 1115 Bank.

John S. Bell, Resp. vs. George Staacke et al., App.
On appeal from the Superior Court in and for the

County of Santa Barbara.

And now at this day this cause being called and having been heretofore submitted and taken under advisement and all and singular the law and the premises being fully considered the opinion of the court herein is delivered by the court.

Whereupon, it was adjudged and decreed by the court on the 30th day of November, 1903, that the order of the Superior Court in and for the County of Santa Barbara in the above entitled cause denying the appellant's motion for a new trial is reversed and cause remanded subsequently on the 28th day of December, 1903, the judgment heretofore rendered herein in this court is hereby amended so as to read as follows:

The order denying the motion for a new trial is reversed except as to the issues covered by the twenty-third paragraph of the findings, to-wit: That John S. Bell was indebted to Thomas Bell on the 16th day of October, 1892, the day when Thomas Bell died, on account of advances of money and interest thereon in the sum of \$52,120.15 and paragraph 4 of the conclusions of law and except as to the issues covered by the additional findings and cause remanded for new trial of all other issues and appellant to recover costs of appeal."

That the said Supreme Court of the State of California, by its judgment as so amended, ordered a new trial, by the said Superior Court of the State of California, in and for the County of Santa Barbara, of all the issues made by the pleadings in the said action save those covered by the findings particularly excepted by the said decree of amendment of the said Supreme Court; that, under the laws of the State of California, the said judgment ordering as aforesaid a new trial of the said action forever vacated the said decree in the said action theretofore made by the said Superior Court of the State of California, in and for the County of Santa Barbara, mentioned and described in paragraph "7th" of the said bill of complaint.

II. That the new trial of the said action ordered

as aforesaid by the said Supreme Court of the State of California was had in the said Superior Court of the State of California, in and for the County of Santa Barbara, during the months of April and May, 1904; that at such new trial the plaintiff in the said action, the said John S. Bell, and his grantee James L. Crittenden, the alleged grantor of the complainant herein, U. S. Oil & Land Company, appeared and participated in the re-trial of the said action; that thereafter all of the issues in the said action, as to which a new trial had been ordered as aforesaid by the said Supreme Court, were submitted by the respective parties to the said action, including the said plaintiff therein, John S. Bell, and by the said James L. Crittenden, to the said Superior Court for decision; that thereafter, on the 17th day of October, 1904, the said Superior Court made, and on the 26th day of October, 1904, filed, its decision in the said action, covering the said issues, which said decision was and is in the words and figures as follows:

"IN THE SUPERIOR COURT OF THE
COUNTY OF SANTA BARBARA,
STATE OF CALIFORNIA.

No. 2826.

John S. Bell, Plaintiff, vs. George Staacke, Teresa Bell as administratrix with the will annexed of the Estate of Thomas Bell, deceased, and Louis Jones, Defendants.

FINDINGS.

The trial of the issues, as to which a new trial was ordered by the Supreme Court, in the above-entitled action, came on regularly before the Court sitting without a jury. The plaintiff appeared by his attorneys Jas. L. Crittenden Esq. and Messrs. Richards & Carrier; T. Z. Blakeman Esq., with whom was also associated Messrs. Canfield & Starbuck, appeared for the defendant Teresa Bell as administratrix with the will annexed of the Estate of Thomas Bell deceased, and the defendant George Staacke appeared by his attorneys Messrs. Canfield & Starbuck. The cross-

complaint of the defendants was dismissed as to the defendant Louis Jones, and the trial of the action as between the plaintiff and the said defendant Jones was continued.

An order of Court was duly made and entered substituting Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, as defendant in the place and stead of Teresa Bell as special administratrix of the said estate of Thomas Bell deceased, the said Teresa Bell as said special administratrix having been heretofore by the order of the Court duly made and entered substituted as defendant in the place and stead of John W. C. Maxwell and George Staacke as executors of the last will of Thomas Bell deceased.

Evidence oral and documentary was introduced in behalf of the respective parties aforesaid and thereupon after argument by the attorneys aforesaid for the respective parties, the whole case upon the issues aforesaid was submitted to the Court for its decision.

And the Court having considered the case, and being fully advised in the premises makes its findings of fact and conclusions of law as follows:

THE COURT FINDS—

1. That on August 23d, 1887, plaintiff was the owner of the tract of land in said County of Santa Barbara bounded and described as follows, to wit:

Commencing at a post in a deep ravine on the Southern boundary line of the Rancho de Los Alamos, being Station No. Two of County Survey Number Three hundred and fifty-seven, May the thirty-first A. D. One thousand eight hundred and sixty-seven for James B. Shaw, from which Station Number One of the official survey on the southeast corner of said Rancho bears south Seventy-seven and one-fourth degrees east, Eighty-five chains and seventy-two links distant; thence running north Seventy-seven and one-fourth degrees west, along the southern boundary line of said rancho, One hundred and seventy-nine chains to a post on the south slope of a high mountain range being station Number Two of County Sur-

vey Number Three hundred and fifty-eight made for Thomas Bell; thence running north three and one-half degrees east, two hundred and twenty chains and eighty-four links to station Number Three of said County survey; thence running North five and three-fourths degrees east Three hundred and eighty-five chains and nine links to the northern boundary line of said Rancho at a point sixteen chains and ninety-seven links west of a post marked A No. 6; thence running east along the said northern boundary line of said Rancho sixteen chains and ninety-seven links to said post marked A No. 6 of the official survey of said Rancho; thence running south Forty chains along the line of said official survey; thence running east forty chains along the northern line of said official survey, thence running north Forty-nine and one-fourth degrees east and along the said northern line of said official survey one hundred and twenty-nine chains and six links to station Number Four of County survey Number Three hundred and fifty-seven; thence running south five and three quarter degrees west along the western line of said County survey number Three hundred and fifty-seven Three hundred and eighteen chains and twenty-eight links to station Number Three of said survey; thence running south three and one-half degrees west and along the line of said survey Two hundred and twenty chains and eighty-four links to the place of beginning; Containing Ten thousand and sixty-seven and two-tenths acres of land.

That on the 23d day of August, 1887, Thomas Bell was the owner of the tract of land in said County of Santa Barbara, being that portion of the Rancho de Los Alamos which is bounded and described as follows, to wit:

Commencing at the southeast corner of the tract of land surveyed and conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada by a deed of conveyance dated August 16th, A. D. 1867, and thence running due east unto the westerly line of the tract of land conveyed by the said Jose Antonio de la

Guerra to Albert Packard on the 26th day of June, A. D. 1867; thence running along the said westerly line of the land last above mentioned to its intersection with the northern boundary line of the "Rancho de Los Alamos;" thence running along the said northern boundary line to its intersection with the northeast corner of the said tract of land conveyed by the said Jose Antonio de la Guerra to the said Jose Antonio Estrada; thence running southerly along the eastern boundary line of said tract of land of said Jose Antonio Estrada to the place of beginning; Containing about 4,000 acres of land.

That on said 23d day of August, the plaintiff and said Thomas Bell sold and conveyed to Dwight W. Grover said two tracts of land for the total sum and price of Three hundred and fifty thousand dollars, of which \$270,000 was the price of the tract of land hereinabove first described, and \$80,000 the price of the other tract; \$70,000 of the total price was paid in cash and the balance of \$280,000 was paid by four notes executed by said Grover in favor of said Thomas Bell for \$54,000 each, dated on said day, and payable in one, two, three and four years respectively from their date, and secured by a mortgage executed by said Grover on said tract of land first above described in favor of said Thomas Bell, and by four promissory notes executed by said Grover in favor of said Thomas Bell for \$16,000 each, dated on said day and payable in one, two, three and four years respectively from their date, and secured by a mortgage executed by said Grover on said tract of land second above described in favor of said Thomas Bell.

That on the 27th day of August, 1887, the plaintiff and said Thomas Bell executed and delivered to each other an agreement in writing in words and figures following, to wit:

"Agreement made this twenty-seventh day of August, A. D. 1887, between Thomas Bell and John S. Bell, both of the City and County of San Francisco, State of California,

"Whereas, the said parties sold and conveyed on August twenty-third, 1887, to Dwight W. Grover fourteen thousand acres of land for the sum of Three hundred and fifty thousand dollars, that is, at twenty-five dollars per acre, for one-fifth cash and four-fifths mortgages. Of said land, Thomas Bell owned four thousand acres and John S. Bell ten thousand acres. By an understanding between them John S. Bell was to get two hundred and seventy thousand dollars, being twenty-seven dollars per acre, and Thomas Bell eighty thousand dollars, being twenty dollars per acre. The cash payment was received by Thomas Bell except the sum of six hundred dollars paid to John S. Bell and the mortgages, namely two hundred and sixteen thousand dollars on the land of John S. Bell, and sixty-four thousand dollars on that of Thomas Bell, were made to Thomas Bell.

"And Whereas, the said Thomas Bell has heretofore from time to time made loans and advances to the said John S. Bell and at his request and he may hereafter make further loans and advances to said John S. Bell and the said Thomas Bell has credited John S. Bell's proportion of the cash payment to him against moneys owing by him and an accounting having been this day had between the said Thomas Bell and John S. Bell of and concerning all claims and demands between them and a statement thereof which is hereto annexed having been made, examined and found correct, and it is settled that the said John S. Bell is now indebted to said Thomas Bell in the sum of Twenty-five thousand dollars five hundred and twenty-nine 5-100 dollars in United States gold coin which sum is to bear interest from this date at the rate of six per cent per annum.

"Now it is agreed between said parties that the said Thomas Bell shall hold said notes and said mortgage for two hundred and sixteen thousand dollars made by Dwight W. Grover to him as security until he has been repaid all present and any future loans and advances which he may see fit to make to said

John S. Bell, with like interest from the date of making the same after which he shall, on demand, assign the same to said John S. Bell.

"This agreement shall bind and be for the benefits of the heirs, executors, administrator and assigns of both of said parties.

"Witness our hands the day and year first above written.

Thomas Bell.

John S. Bell."

That on or about the 25th day of August, 1887, the said Dwight W. Grover granted, bargained, sold and conveyed by deed to Samuel Rosener an undivided 3-5 of all the land and real property hereinbefore described.

2. That neither the said Grover nor the said Rosener made payment of the first of said four notes of \$54,000 each or of the first said four notes of \$16,000 each or of any part or portion thereof, nor did they, the said Grover and Rosener, or either of them, pay any part or portion of any of said notes given as aforesaid for the balance of the purchase price of the said two tracts of land.

That after the maturity of the first of the said notes and prior to the 7th day of March, 1889, it was agreed between the said Thomas Bell and the said Grover and Rosener that the said Grover and Rosener should convey to George Staacke, who was the confidential clerk and agent of the said Thomas Bell, the land hereinabove first described, except such portions thereof as the said Grover and Rosener had sold, and that said Grover and Rosener should assign and transfer unto said Thomas Bell all notes and mortgages held and taken by them for deferred payments of the purchase price of such portions of said tract of land hereinabove first described as they, the said Grover and Rosener, had sold, and that the said Thomas Bell, should in consideration thereof, release the said Grover and Rosener from the obligation of said four notes of \$54,000 each and of the

mortgage given as aforesaid to secure the payment thereof.

That on March 7th, 1889, in pursuance of the agreement last aforesaid, the said Grover and Rosener, with the knowledge and consent of the plaintiff John S. Bell, and for the purpose of obtaining a release from the obligation of said four notes of \$54,000 each and of the said mortgage to secure them, and for no other purpose whatever, executed a deed to said George Staacke of all the tract of land first hereinabove and in said mortgage described, excepting therefrom all the town lots sold and conveyed by deed by said John S. Bell prior to the 7th day of April, 1887, the same being laid down and shown upon a certain map entitled "Map of the Town of Los Alamos surveyed for J. B. Shaw and John S. Bell, September 15, 1876, W. W. Bagster, surveyor," also excepting therefrom the land conveyed or donated prior to June 7th, 1887, by John S. Bell for county roads, streets and railroads and cemetery plot adjoining said town of Los Alamos conveyed by said John S. Bell, also excepting therefrom certain described parcels of land sold and conveyed by Dwight W. Grover and Samuel Rosener since August 23d, 1887.

That on the said 7th of March, 1889, and in pursuance of the agreement aforesaid between the said Grover and Rosener, and Thomas Bell, the said Grover and Rosener, with the knowledge and consent of the said John S. Bell, assigned and transferred to the said Thomas Bell all notes and mortgages taken and held by them as security for the deferred payments on portions of the said tract of land hereinabove first described which they, said Grover and Rosener, had sold since the 23d day of August, 1887.

That upon the delivery of the said deed of March 7th, 1889, by Grover and Rosener to said George Staacke, and in consideration thereof, the said Thomas Bell delivered to said Grover and Rosener the said four notes for \$54,000 each secured by the said

mortgage on the tract of land hereinabove first described, and released and satisfied said mortgage and dismissed the suit which he had begun for the foreclosure thereof.

That the said George Staacke paid nothing to said Grover and Rosener for said deed and conveyance to him, but was the nominee of the said Thomas Bell in regard thereto, and accepted said deed and conveyance solely as the nominee of said Thomas Bell and in trust to hold the land thereby conveyed first for the use and benefit of Thomas Bell, to wit: as security for the payment by the plaintiff John S. Bell to said Thomas Bell of the balance then due to said Thomas Bell upon all sums of money which had theretofore been advanced and loaned by the said Thomas Bell to the said John S. Bell and for all sums of money which the said Thomas Bell should thereafter loan or advance to the said John S. Bell, with interest thereon, and second for the use and benefit of the said John S. Bell, to wit: to convey to the said John S. Bell the said tract of land or all that remained thereof after the payment of all sums then due to said Thomas Bell by said John S. Bell, and all advances and loans thereafter made by said Thomas Bell to said John S. Bell.

That at the time of the said execution of the said conveyance by said Grover and Rosener to said Staacke, it was agreed by and between the plaintiff John S. Bell and the said Thomas Bell that said Staacke should hold the land hereinabove first described, with the exceptions therefrom hereinabove noted, as security for the payment by the plaintiff to said Thomas Bell of all sums of money which had theretofore been advanced by said Thomas Bell to the plaintiff, or which were then due and owing by said John S. Bell to said Thomas Bell, and for all sums of money which the said Thomas Bell should thereafter advance or loan to the said John S. Bell, with interest thereon; and that after the payment of all such sums with interest thereon by John S. Bell to the said Thomas Bell, the said Staacke should

convey the said land, hereinabove first described, or what remained thereof, to the said John S. Bell.

That after the date of the said agreement between John S. and Thomas Bell, dated August 27th, 1887, and until the date of his death, the said Thomas Bell continued from time to time at the request of John S. Bell to make advances and loans of money to him, the said John S. Bell, upon the security, first of the said four notes of \$54,000 each and the mortgage made to secure the same, and after the surrender thereof and the conveyance of the said tract of land hereinabove first described by Grover and Rosener to George Staacke upon the security of the said tract of land; and the said John S. Bell accepted and received all the said advances and loans of money by the said Thomas Bell to him with the knowledge at the time the said loans and advances were made, that Thomas Bell made the said loans and advances upon the security aforesaid.

That by judgment heretofore, to wit: on the 9th day of July, 1901, made and entered in this action upon the cross-complaint of the defendant the said administratrix of the estate of Thomas Bell deceased, it was determined that there was at the date of the death of Thomas Bell, to-wit: on October 16th, 1892, a balance due from said John S. Bell, the plaintiff herein, to the said Thomas Bell in the sum of Fifty-two thousand one hundred and twenty and 15-100 (\$52,120.15) dollars for the said loans and advances made by the said Thomas Bell to the said John S. Bell, including the said balance of 25,529.05 mentioned in the said agreement of August 27th, 1887 (with interest on said balance and on said other loans and advances according to the said agreement of August 27th, 1887. And the said defendant, the said Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, recovered in this action of the plaintiff John S. Bell, on the 9th of July, 1901, judgment against the said John S. Bell for the said balance of \$52,120.15, and for interest thereon at the

rate of seven per cent per annum from the 16th day of October, 1892.

That the said Grover and Rosener upon the execution of said deed of March 7th, 1889, by them to said George Staacke, delivered possession to said George Staacke of all the tract of land hereinabove first described, except the portions thereof mentioned in said deed as reserved and excepted, but the possession of said Staacke was at all times thereafter and until the death of Thomas Bell, subject to the control of said Thomas Bell, and said Thomas Bell at all times after the execution of said deed by Grover and Rosener to Staacke, with the knowledge and consent of John S. Bell, exercised control and management over said tract of land and caused the rents and products thereof to be delivered to him at San Francisco. That the said rents and the proceeds of said products were by Thomas Bell placed to the credit of John S. Bell in his account which embraced the said loans and advances, and the said control and management of Thomas Bell was only because of and in aid of the lien upon said land existing in his favor for the balance due him upon said loans and advances made and to be made to said John S. Bell.

That no part of the said sum of \$52,120.15, or of the interest thereon, has been paid. That the whole of the said principal sum of \$52,120.15, and interest thereon from the 16th day of October, 1892, amounting to the sum of \$43,780.92 at the date hereof, is due and payable to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, upon the cross-complaint herein, and a lien exists in favor of the said defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, upon the said tract of land hereinabove first described, and conveyed to George Staacke by said deed of March 7th. 1889, for the payment of the said principal sum and interest, amounting to the sum of Ninety-five thousand nine hundred and one and 7-100 (\$95, 901.07) dol-

lars, and for the accruing interest on the said sum of \$52,120.15.

3. That the said deed of March 7th, 1889, from Grover and Rosener to George Staacke was not executed and delivered by Grover and Rosener with the intent and for the purpose of conveying back and in trust to convey back to the plaintiff the tract of land hereinabove first and in said deed described, and said deed was not accepted and received by said Geo. Staacke in trust for said purpose, except that said George Staacke did accept and receive the said deed in trust to convey to the plaintiff the said tract of land after payment had been made by the plaintiff to Thomas Bell of all sums due by him to Thomas Bell for moneys loaned and advanced, and to be loaned and advanced, to him by said Thomas Bell. That said George Staacke does not hold the naked legal title to said tract of land in trust for the purpose of conveying and to convey and deed the same to the plaintiff and for no other purpose.

That the plaintiff did not on or about the 7th day of March, 1889, enter into or take actual possession of all or any portion of the land mentioned and described in the plaintiff's amended and supplemental complaint, and the plaintiff has not, ever since the 7th day of March, 1889, and down to the appointment of a receiver in this action, or during any part of said time, remained or been in the actual possession, adverse or otherwise, as owner in fee simple or otherwise of said land or any portion thereof.

That the defendant George Staacke did not, in violation of any trust, or without the knowledge or consent of plaintiff, borrow of the San Francisco Savings Union \$60,000, and did not in violation of any trust or trust deed convey said land in trust to secure the payment of said \$60,000.

That George Staacke and Thomas Bell did not appropriate to their own use said \$60,000, but the whole of said sum, less the cost of Abstract and execution and recording of papers, was by Thomas Bell placed to the credit of plaintiff in his said account,

and the plaintiff on February 12th, 1892, with full knowledge of the borrowing of said sum of \$60,000, ratified and approved the same and accepted and approved the crediting of the proceeds thereof to him in his account with said Thomas Bell.

That said John S. Bell was not the owner of the four notes of \$54,000 each executed by said Grover to Thomas Bell, and the mortgage given to secure them, except as the same were subject to the agreement of August 27th, 1887, between John S. and Thomas Bell and hereinbefore set out. That said four notes and mortgage to secure them were not made and executed to Thomas Bell for the purpose of rendering the execution of releases and partial releases more convenient or easy.

It is not true that on or about the 6th of March, 1889, an oral agreement was made and entered into by and between said Grover, Rosener, John S. Bell and Thomas Bell, that said Grover and Rosener should deed and convey back to John S. Bell all or any of the land mentioned in the Amended and Supplemental Complaint, nor is it true that, hereafter and on or about the 6th day of March, 1889, John S. Bell and Thomas Bell made and entered into an oral agreement that any of said land should be conveyed back to John S. Bell by being first deeded and conveyed by said Grover and Rosener to George Staacke and then by said Staacke to John S. Bell.

That the deed of March 7th, 1889, was not made, executed and delivered to George Staacke, nor transfer of the 10,000 acre tract described therein made to said Staacke, with the intent and for the sole purpose of conveying and in trust to convey back to the plaintiff the said 10,000 acre tract or any part thereof, nor did said Staacke accept such conveyance for such sole purpose.

That the agreement of August 27th, 1887, between John S. Bell and Thomas Bell and hereinabove set out, was never rescinded by either, or by consent of both.

4. That the defendant George Staacke did not

pay or give any consideration for the deed of conveyance of the tract of land, hereinabove secondly described, by the said Grover and Rosener to him, of date March 7th, 1889, but the said deed of said tract was made by the said Grover and Rosener to the said Staacke at the request of Thomas Bell, and in consideration of the surrender by Thomas Bell to the said Grover and Rosener of the said four notes of \$16,000 each, and of the release of the mortgage given by the said Grover to secure the said notes and the dismissal of the suit brought by Thomas Bell for the foreclosure of the said mortgage. That the possession of the said tract of land last hereinabove referred to was delivered by the said Grover and Rosener to the said George Staacke who was at the time the confidential clerk and agent of said Thomas Bell, and the said Thomas Bell thereafter continuously controlled and managed the said tract of land received all the rents and profits thereof.

5. That on the 8th day of March, 1893, the plaintiff herein caused to be filed and recorded in the office of the County Recorder of the said County of Santa Barbara a notice of the pendency of this suit, containing the names of the parties thereto, the object thereof, and also a true and correct description of the land and premises affected thereby.

CONCLUSIONS OF LAW.

The Court concludes that a lien exists upon the tract of land in the findings hereinabove first described, and conveyed by the the deed of Grover and Rosener of March 7th, 1889, to George Staacke, in favor of the defendant Teresa Bell as the administratrix with the will annexed of the estate of Thomas Bell deceased for the payment to her of the sum of Ninety-five thousand nine hundred and one and 7-100 (\$95,901.07) dollars and accruing interest on \$52,120.15 thereof; And that the said administratrix defendant is entitled to a judgment of the Court in this action foreclosing the said lien and directing the sale to be made of the said tract of land, and out of the proceeds of such sale that there be paid first, the

costs and expenses of such sale; second, the costs of suit and an appeal taxed in favor of the said defendant the administratrix and defendant George Staacke, and then the amount of the said lien, to wit: the said sum of \$95,901.07 and accruing interest. And the balance of the proceeds of the sale, if any, to be paid to the plaintiff or his attorneys; And directing a judgment for deficiency if the sale of the said land does not realize sufficient to pay said costs and expenses of sale and amount due the said defendant the administratrix, to be entered against the plaintiff John S. Bell.

The said defendant Teresa Bell as the administratrix with the will annexed of the estate of Thomas Bell deceased, is further entitled to a decree directing the defendant George Staacke to convey by proper and sufficient deed of conveyance to her as such administratrix the tract of land in the findings hereinabove secondly described.

Let judgment be entered accordingly.

Dated this the 17th day of October, 1904.

J. W. Taggart,

Judge of said Superior Court.

Filed October 26th, 1904, C. A. Hunt, Clerk."

That on the said 17th day of October, 1904, the said Superior Court made, and on the said 26th day of October, 1904, filed, and on the 28th day of October, 1904, entered, its judgment and decree, and order of sale, in the said action, in accordance with its said decision, which said judgment and decree, and order of sale, was and is in the words and figures as follows:

"IN THE SUPERIOR COURT OF THE
COUNTY OF SANTA BARBARA,
STATE OF CALIFORNIA.

John S. Bell, Plaintiff, vs. George Staacke, Teresa Bell as the administratrix with the Will annexed of the Estate of Thomas Bell, deceased, and Louis Jones, Defendants.

No. 2826.

DECREE AND ORDER OF SALE.

The Court having made and filed herein its Find-

ings of fact and conclusions of law, it is now by the court Ordered, Adjudged and Decreed that there is now due and owing from the plaintiff John S. Bell to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, the sum of Ninety-five thousand nine hundred and one and 7-100 (\$95,901.07) dollars, and that the said plaintiff John S. Bell is personally liable for the whole amount thereof. That the said sum of \$95,901.07, and the costs of the said defendants to be taxed herein and their costs on appeal taxed at sum of \$608.50, is a valid lien upon the land and premises hereinafter set forth and described. That the defendant George Staacke holds the legal title of the said land and premises in trust, first, as security for the payment of the sum aforesaid and the costs of the said defendants to be taxed herein, and second, in trust for the use and benefit of the plaintiff John S. Bell.

It is further ordered, adjudged and decreed that all and singular the land and premises first mentioned in the Complaint and in the findings herein, and hereafter described, or so much thereof as may be sufficient to raise the amount due to the said defendant as aforesaid, and interest and costs of suit and expenses of sale, and which may be sold separately without material injury to the parties interested, be sold at public action by the Commissioner herein appointed to make such sale, in the manner prescribed by law and according to the course and practice of this Court, and that the said Commissioner after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of the said land and premises.

It is further ordered, adjudged and decreed that Jesse L. Hurlbut, of the City of Santa Barbara, be and he is hereby appointed a Commissioner of this Court to sell the said land and premises hereinafter described, and it is further ordered that before entering upon his duties as such Commissioner he shall take the oath and give an undertaking in the sum of

One Thousand Dollars, all as required by law, That the said Commissioner, out of the proceeds of the said sale, retain his fees and disbursements and pay to the said defendants George Staacke and Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, or to their respective attorneys, out of the proceeds of the said sale the sum of of \$1085.15, costs of the said defendants George Staacke and Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, in this suit and on appeal and accrued interest, and also pay to the said defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, or to her attorney, from the proceeds of the said sale the further sum of \$95,901.07, the amount so found to be due as aforesaid, together with interest on \$52,120.15 of said last sum at the rate of 7 per cent per annum from the date of this decree or so much thereof as the said proceeds of the sale will pay. That the plaintiff and all persons claiming or to claim from or under him, and all persons having liens subsequent to said conveyance of March 7th, 1889, by Grover and Rosener to George Staacke, by judgment or decree upon the land hereinafter described, and their personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree and their heirs or personal representatives, and all persons claiming to have acquired any estate or interest in said premises subsequent to the filing of the notice of the pendency of this action with the Recorder of the County of Santa Barbara, be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said land and premises and every part and parcel thereof from and after the delivery of said Commissioner's deed.

And it is further ordered, adjudged and decreed that the purchaser or purchasers of the said land and premises at such sale be let into possession thereof and that any of the parties to this action who may be in possession of said premises or any part thereof, and any person who since the commencement of this

action, has come into possession under them, or either of them, deliver possession thereof to said purchaser or purchasers, on production of the Commissioner's deed for such land and premises, or any part thereof.

And it is further ordered, adjudged and decreed that if the moneys arising from the said sale shall be insufficient to pay the amount so found due the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell deceased, as above stated with interest and costs as herein provided, and expenses of sale as aforesaid, said Commissioner specify the amount of such deficiency and balance due the said defendant in his return of said sale, and that on the coming in and filing of said return, the Clerk of this Court docket a judgment for such balance against the plaintiff John S. Bell, and that the said plaintiff pay to the said defendant the amount of such deficiency and judgment with interest thereon at the rate of 7 per cent per annum from the date of said last mentioned return and judgment, and that the said defendant the administratrix have execution therefore.

The lands and premises directed to be sold by this decree are situate in the County of Santa Barbara, State of California, and bounded and particularly described as follows:

Commencing at a post in a deep ravine on the southern boundary line of the Rancho de Los Alamos, being station No. Two of County Survey Number Three hundred and fifty-seven, May the thirty-first A. D. One thousand eight hundred and sixty-seven for James B. Shaw, from which station Number One of the official survey on the southeast corner of said Rancho bears south Seventy-seven and one-fourth degrees east, Eighty-five chains and seventy-two links distant; thence running north Seventy-seven and one-fourth degrees west, along the southern boundary line of said rancho One hundred and seventy-nine chains to a post on the south slope of a high mountain range being station Number Two of County Survey Number Three hundred and fifty-eight made for Thomas

Bell; thence running north three and one-half degrees east, two hundred and twenty chains and eighty-four links to station Number Three of said county survey; thence running north Five and three-fourths degrees east Three hundred and eighty-five chains and nine links to the northern boundary line of said Rancho at a point sixteen chains and ninety-seven links west of a post marked A. No. 6; thence running east along the said northern boundary line of said rancho sixteen chains and ninety-seven links to said post marked A. No. 6 of the official survey of said rancho; thence running south Forty chains along the line of said official survey; thence running east Forty chains along the northern line of said official survey; thence running north Forty-nine and one-fourth degrees east and along the said northern line of said official survey One hundred and twenty-nine chains and six links to station Number Four of County survey Number Three hundred and fifty-seven; thence running South five and three-quarter degrees west along the western line of said County survey number Three hundred and fifty-seven, Three hundred and eighteen chains and twenty-eight links to station number Three of said survey; thence running South three and one-half degrees west and along the line of said survey Two hundred and twenty chains and eighty-four links to the place of beginning; Containing Ten thousand and sixty-seven and two-tenths acres of land. Excepting and Reserving from the lands above described the following named town lots, the same being laid down and shown upon a certain map entitled "Map of the Town of Los Alamos," situated in the County of Santa Barbara, surveyed for J. B. Shaw and John S. Bell, September 15th, 1876, W. W. Bagster, Surveyor, and recorded in said Santa Barbara County Recorder's office at the request of J. B. Shaw on February 1st, 1879, in Book B of Miscellaneous Records, page 406, to wit:

Lots 3, 4, 5, 6, 7, 8, 9, 11 and 13 to 26 inclusive, in Block Four. Lots 3, 4, 6, 8, 9, and 14 to 22 inclusive, in Block Five. Lots 5 and 6 in Block Six. Lots 1 to

13 inclusive, 16, and 18 to 26 inclusive, in Block Eight. All of Block Nine except Lot 22. All of Block Sixteen except Lots 12, 13, 23, 24, 25 and 26. All of Block Seventeen except Lots 1, 2, 3, 4, 5, and 6. Lots 21 and 22 in Block Eighteen. Lots 1 to 9, inclusive in Block Twenty. Lots 1, 2, 3, 4, 6, 7, 8 and 9 in Block Twenty-one. Also excepting all the land conveyed or donated prior to June 7th, A. D. 1887 by John S. Bell for County Roads, Streets and Railroads; and the rights of the purchasers of Lots in said town of Los Alamos to the use of the streets and highways therein; also the Cemetery Plot adjoining said town, conveyed by said John S. Bell by deed of June 17, 1885. Also excepting the following tracts of the Grover, Rosener and Irwin subdivisions of a part of the Rancho de Los Alamos as the same is laid out on the map of the subdivisions of a part of said Rancho, surveyed by R. R. Harris in October and November, 1887, which map was filed in the County Recorder's Office of Santa Barbara County, February 11th, 1888, to wit: Tract Number Twenty-eight, containing four and twenty-five one-hundredths acres of land; Tracts numbers 51, 52 and 53, containing fifteen acres of land; Tract No. 23, containing four and thirty-one one-hundredths acres of land.

It is further ordered, adjudged and decreed that the defendant George Staacke, upon tender to him, execute and deliver to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, a deed of conveyance of the tract of land in the findings herein secondly described, to wit: All that tract of land situate in the County of Santa Barbara, State of California, bounded and described as follows, to wit:

Commencing at the southeast corner of the tract of land surveyed and conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada by a deed of conveyance dated August 16th, A. D. 1867, and thence running due east unto the westerly line of the tract of land conveyed by the said Jose Antonio de la Guerra to Albert Packard on the 26th day of June, A.

D. 1867; thence running along the said westerly line of the land last above mentioned to its intersection with the Northern boundary line of the "Rancho de Los Alamos;" thence running along the said northern boundary line to its intersection with the northeast corner of the said tract of land conveyed by the said Jose Antonio de la Guerra to the said Jose Antonio Estrada; thence running southerly along the eastern boundary line of said tract of land of said Jose Antonio Estrada to the place of beginning containing about Four Thousand acres of land.

Further ordered and adjudged that the defendants have and recover of the plaintiff their costs in the sum of \$476.65.

Dated this 17th day of October, 1904.

J. W. Taggart,

Judge of said Superior Court.

Filed October 26th, 1904, C. A. Hunt, Clerk."

That the said judgment and decree, and order of sale, has never been amended, modified, vacated or set aside or in any way altered, impaired or affected, and the same became and is final and conclusive upon the parties to the said action and their assigns.

That the plaintiff in the said action, the said John S. Bell, gave notice of his intention to move for a new trial of the said action, and thereafter in pursuance of such notice made his motion for such new trial; that thereafter and after hearing of the said motion, and on or about the 24th day of June, 1905, the said Superior Court of the State of California, in and for the County of Santa Barbara, made, filed and entered its order in the said action denying the said motion for a new trial thereof; that the plaintiff in the said action, the said John S. Bell, and his said grantee James L. Crittenden, the alleged grantor of the complainant herein, thereupon made and prosecuted two several appeals to the said Supreme Court of the State of California, one thereof from the said judgment and decree, and order of sale, made as aforesaid on the 17th day of October, 1904, the other thereof from the said order denying the motion of the

said plaintiff for a new trial of the said action, made as aforesaid on or about the 24th day of June, 1905.

III. That thereafter and prior to the 2nd day of January, 1906, the defendant herein Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, defendant in the said action and respondent to both the said appeals, moved the said Supreme Court of the State of California to dismiss the said appeal of the said John S. Bell from the said judgment and decree, and order of sale, made filed and entered as aforesaid in the said action; that the said Supreme Court on the 2nd day of January, 1906, after hearing of the said motion of the said defendant and respondent, made and entered its order and judgment dismissing the said appeal of the said plaintiff and appellant, John S. Bell, from the said judgment and decree, and order of sale; that on the 22nd day of July, 1907, after hearing of the said appeal of the said John S. Bell from the said order denying his said motion for a new trial of the said action, the said Supreme Court made and entered its order and judgment affirming the said order denying the said motion.

IV. That none of the said four several judgments, orders and decrees of the Supreme Court of the State of California, made as aforesaid on the 16th day of September, 1902, the 28th day of December, 1903, the 2nd day of January, 1906, and the 22nd day of July, 1907, respectively, has ever been reversed, amended, modified or in any way altered, or its effect controlled or otherwise at all affected; that the same, since the respective dates thereof, have all been and now are final; that the effect thereof was and is to reverse, vacate and render void and of no effect that certain judgment and decree of the said Superior Court of the State of California, in and for the County of Santa Barbara, in the said action, pleaded and set out in the said paragraph "7th" of the bill of complaint herein, and to give full force, effect and finality to that certain judgment and decree, and order of sale, of the said Superior Court, made as aforesaid in

the said action on the 17th day of October, 1904, and hereinbefore pleaded and set forth, and validity to all acts done under and in pursuance of such judgment and decree and order of sale; that in and by its said four several judgments, orders and decrees the said Supreme Court of the State of California claimed, assumed and exercised, and it had, jurisdiction of and over each and all the appeals, questions and matters therein severally presented, decided, adjudged, ordered and decreed, and particularly jurisdiction to entertain, hear, pass upon, review, and grant the said appeal taken by the said George Staacke, individually, and Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, from the said order made as aforesaid on the 7th day of June, 1901, denying their said motion for a new trial of the said action, and to remand the said cause to the said Superior Court of the State of California, in and for the County of Santa Barbara, for a new trial of all issues made therein save those expressly excepted as aforesaid, and asserted and upheld the jurisdiction of the said Superior Court to entertain, hear and pass upon the said motion of the said two defendants for a new trial of the said action and thereafter, upon the said remand of the said cause, to re-try all the issues made in the said action save those expressly excepted as aforesaid by the said Supreme Court, and to make file and enter in the said action the decision and the judgment both dated the 17th day of October, 1904, hereinbefore pleaded and set forth; that the said Superior Court claimed, assumed and exercised, and it had, jurisdiction to re-try the said issues and to make the decision and judgment last hereinabove mentioned; that in passing upon and determining the said several four appeals, the said Supreme Court expressly considered, asserted and upheld its said own jurisdiction and the said jurisdiction of the said Superior Court of the State of California in and for the County of Santa Barbara, in the several four opinions and decisions of the said Supreme Court, supporting, announcing and directing its said four several judg-

ments, orders and decrees upon such appeals, respectively, appearing respectively, under the caption "Bell v. Staacke", in Volume 137 of the official reports of the said Supreme Court, at pages 307 to 314, both inclusive, in Volume 141 of such reports, at pages 186 to 204, both inclusive, in Volume 148 of such reports, at pages 404 to 407, both inclusive, and in Volume 151 of such reports, at pages 544 to 548, both inclusive, reference to which said opinions, decisions and reports are hereby expressly made in order that the same may be deemed hereby incorporated herein as though the same were set out at length in this plea; that the plaintiff in the said action, John S. Bell, and the said claimants under him, submitted to the jurisdiction of the said Supreme Court and the said Superior Court, respectively, upon said several appeals and said re-trial.

V. That on the day of February, 1906, an order of sale was issued out of the said Superior Court of the State of California, in and for the County of Santa Barbara, upon the said judgment and decree, bearing date the 17th day of October, 1904, hereinbefore pleaded and set forth, to Jesse L. Hurlburt, of the City of Santa Barbara, the Commissioner named and appointed therein to sell the land and premises in the said judgment and decree, and also in the bill of complaint herein, particularly described; that the said Jesse L. Hurlburt qualified as such Commissioner as required by the said judgment and decree and order of sale; that thereafter, on the 5th day of March, 1906, the said Commissioner made and, in pursuance of and in accordance with the said judgment and decree and the said order of sale, after due and legal notice of sale given according to law, sold at public auction, at the place and hour required by law, all the said land and premises to the highest bidder at such sale, to-wit, to the defendant herein Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, for the aggregate of the sum and amount due and decreed to such administratrix by and under the terms of the

said judgment and decree, together with the costs therein awarded to the defendants in the said action, the fees of the said Commissioner, and all the costs and expenses of the said sale, and thereafter on the said day made, executed and delivered to the said administratrix his certificate of the said sale and filed for record a duplicate of such certificate in the office of the County Recorder of the said County of Santa Barbara; that after the lapse of one year and on the 8th day of April, 1907, no redemption having theretofore been made of such land or premises, or any part or portion thereof, the said Commissioner, under and in accordance with law, made executed and delivered to the said administratrix a deed of conveyance of all the said land and premises, and the said administratrix thereupon forthwith filed the same for record in the office of the County Recorder of the said County of Santa Barbara, in Book 117 of Deeds, at page 332, of the records of said county, and immediately entered into possession of all the said land and premises, except the ranch residence, one corral and the garden, and about thirty-five (35) acres of land surrounding the said residence, and ever since has continued in complete, open and peaceable possession of all the said land and premises, save such exceptions; that at the date of such entry by the said administratrix the said ranch residence, corral, garden and surrounding thirty-five (35) acres were in the possession of the said plaintiff in the said action, John S. Bell, and his wife, Kate M. Bell, and they so continued in such possession until the 14th day of January, 1911, at which last named date the said administratrix recovered possession of all the same by means of a writ of assistance issued in her favor out of the said Superior Court of the State of California, in and for the County of Santa Barbara, upon an order of the said Superior Court therefor, made and entered in the said action on the 22nd day of March, 1909; that the said Superior Court claimed, assumed and exercised, and it had, jurisdiction to make the said order; that ever since the said 14th day of January, 1911,

the said administratrix has continued in complete, open and peaceable possession of all the said ranch residence, corral, garden and surrounding thirty-five (35) acres; that the effect of the said sale, and of the execution, delivery and recordation as aforesaid of the said duplicate certificate of sale and the said deed, was to establish and vest and they did forthwith establish and vest the title of all the said land and premises in the said estate of Thomas Bell, deceased, free and clear of any claim, lien, right, title, interest or estate whatsoever, of the said plaintiff in the said action, John S. Bell, or of any grantee or successor in interest of the said plaintiff; that the said John S. Bell and Kate M. Bell, his wife, appealed to the said Supreme Court of the State of California from the order of the said Superior Court granting the aforesaid writ of assistance; that on the 9th day of January, 1911, after hearing of the said last mentioned appeal, the said Supreme Court made and entered its order and judgment affirming the said order granting the said writ; that the said order and judgment of affirmance of the Supreme Court has never been vacated, amended, modified or qualified, and the same has become and is final; that the said Supreme Court had jurisdiction to make the said judgment; that in passing upon and determining the said last mentioned appeal the said Supreme Court again expressly considered, asserted and upheld its said own jurisdiction and the said jurisdiction of the Superior Court of the State of California, in and for the County of Santa Barbara, as aforesaid, in its opinion and decision supporting, announcing and directing its said judgment affirming the said order granting the said writ of assistance, appearing in Volume 159 of the official reports of the said Supreme Court, at pages 193 to 197, both inclusive, reference to which said opinion, decision and report is hereby expressly made in order that the same may be deemed hereby incorporated herein as though the same were set out at length in this plea.

VI. That the deed mentioned in paragraph "9th"

of the bill of complaint herein, executed by George Staacke to James L. Crittenden and Catherine M. Bell and delivered on the 8th day of July, 1901, to C. A. Hunt, as County Clerk of the County of Santa Barbara, State of California, was so executed and delivered for the sole purpose of obtaining a stay of execution of the said judgment and decree mentioned and set out in paragraph "7th" of the bill of complaint herein, pending the said respective appeals of the said defendants to the Supreme Court of the State of California, from the said judgment and decree and from the said order denying a motion for a new trial of the action wherein the same had been rendered, and for no other purpose, under and in accordance with law, and particularly in compliance with the terms and provisions of Section 944 of the Code of Civil Procedure of the State of California, reading as follows:

"If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court."

That on the 28th day of December, 1903, upon the granting as aforesaid by the said Supreme Court of a new trial of the said action, and the consequent vacation as aforesaid of the said judgment and decrees, the said deed became and ever since has been void and ineffective for any purpose whatsoever.

VII. That the payment of \$179,411.40, made on or about the 16th day of June, 1908, by the said Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, to the defendants herein, Mercantile Trust Company of San Francisco and San Francisco Savings Union, mentioned and described in paragraph "11th" of the bill of complaint herein, was made under and in accordance with the terms of a certain order duly made, filed and entered on the 12th day of June, 1908, by the Superior Court of the State of California, in and for the City

and County of San Francisco, in the matter of the estate of the said Thomas Bell, deceased, then pending before the said Superior Court, which said order expressly authorized and directed such payment and was made upon the petition therefor of the said administratrix, filed in the said matter and Court on the 4th day of June, 1908, and upon a hearing thereof, and after notice of such hearing given in accordance with law; that such order has never been appealed from, or vacated or modified, and the same is final; that such payment was made for the sole purpose and with the sole intent of discharging the said property and premises from the lien and burden of that certain judgment and decree, in favor of the said Mercantile Trust Company of San Francisco and San Francisco Savings Union, pleaded and set forth in paragraph "10th" of the said bill of complaint, and for no other purpose and with no other intent; that such payment did discharge the said property and premises from such lien and burden and satisfied the said judgment, and was made under and in accordance with such judgment.

VIII. That the complainant herein, U. S. Oil & Land Company, at all times well knew each and all of the events, occurrences, facts and matters hereinbefore recited, and the effect in law thereof, as and when the same respectively took place, and well knew, before it first acquired or assumed to acquire its alleged interest in the said land and premises, of the said then pending action and of the right, title, interest and estate of the said administratrix, and the said estate of Thomas Bell, deceased, therein and to and in the said land and premises; that these defendants claim and have and own an interest in the said land and premises and in certain portions thereof, as successors in interest by purchase for valuable consideration, of the said estate and of the heirs and devisees of the said Thomas Bell, deceased; that these defendants knew of the matters hereinbefore pleaded at the time they acquired their said interest and relied upon them to assure and secure the title of these defendants to

such interest upon such purchase.

IX. That on the 9th day of March, 1910, the complainant, U. S. Oil & Land Company, commenced an action in the said Superior Court of the State of California, in and for the County of Santa Barbara, against the same defendants as the defendants herein, save these defendants, whose interest in the said land and premises was not then a matter of record, by filing a complaint asserting substantially the same cause of complaint as is alleged, and praying for the same relief as is prayed, by it in the bill of complaint herein; that certain of the defendants in the said action, to-wit, the defendants herein Teresa Bell, as administratrix with the will annexed of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Agency, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Arthur S. Holman, and Teresa Bell, served and filed their answer therein on the 9th day of April, 1910, setting up all the matters and things previously occurring or existing hereinbefore in this plea set forth and pleaded and caused the said action to be set for trial by the said Superior Court on a day certain, to-wit, on the 6th day of July, 1910; that on the said day, a few minutes before the said action was called by the said Superior Court for trial, the said plaintiff therein, U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards & Carrier, without the consent or knowledge of the said defendants and their attorneys, filed and procured to be entered in the office of the Clerk of the said Superior Court a dismissal of the said action; that the said action so commenced, set for trial and dismissed was numbered 7480 of civil actions in said Superior Court.

X. That on the 4th day of March, 1911, the complainant, U. S. Oil & Land Company, commenced another action in the said Superior Court of the State

of California, in and for the County of Santa Barbara, against the same defendants as the defendants herein, save these defendants, whose interest in the said land and premises was not then a matter of record, by filing a complaint asserting substantially the same cause of complaint as is alleged, and praying for the same relief as is prayed, by it in the bill of complaint herein; that certain of the defendants in the said action, to-wit; the defendants herein Teresa Bell, as administratrix with the will annexed of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Agency, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Arthur S. Holman, and Teresa Bell, served and filed their answer therein on the 29th day of July, 1911, setting up all the matters and things previously occurring or existing hereinbefore in this plea set forth and pleaded and caused the said action to be set for trial by the said Superior Court on a day certain, to-wit: on the 17th day of October, 1911; that on the said day, a few minutes before the said action was called by the said Superior Court for trial, the said plaintiff therein, U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards & Carrier, without the consent or knowledge of the said defendants and their attorneys, filed and procured to be entered in the office of the Clerk of the said Superior Court a dismissal of the said action; that the said action so commenced, set for trial and dismissed was numbered 7787 of civil actions in said Superior Court.

XI. That the complainant is concluded and prevented, by the matters aforesaid, and particularly by the several decisions, judgments, orders and decrees of Court hereinabove mentioned and referred to, from raising all or any of the matters set forth in its said bill of complaint.

All of which matters and things these defendants do aver to be true, and they plead the said respective decisions, judgments, orders, decrees and writs of the said Supreme Court of the State of California, the said Superior Court of the State of California, in and for the County of Santa Barbara, and the said Superior Court of the State of California, in and for the City and County of San Francisco, and the said records, hereinabove particularly mentioned and described, and the acts done in pursuance thereof, as hereinabove set forth, to the bill of complaint herein, and pray the judgment of this Honorable Court whether they ought to be required to make any other or further answer to the said bill of complaint, and pray to be hence dismissed with their costs and charges in that behalf most wrongfully sustained.

Chauncey S. Goodrich,

Solicitor for said defendants.

Northern District of California, City and County of San Francisco.—ss.

A. E. Boynton makes solemn oath and says: That he is the attorney in fact of W. P. Hammon, one of the defendants above named; that the said W. P. Hammon and F. C. Van Deinse, another of the defendants above named, are at the present time without the State of California and in the State of New York, and for that reason affiant makes this affidavit on behalf of the said W. P. Hammon; and affiant further says that the foregoing plea is not interposed for delay and that the same is true in point of fact.

A. E. Boynton,

Subscribed and sworn to before me this 29th day of November, A. D. 1912.

(Seal)

Ceda de Zaldo,

Notary Public in and for the City and County of San Francisco, State of California.

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

Chauncey S. Goodrich.

(TITLE OF COURT AND CAUSE.)

ANSWER FORTIFYING PLEA.

The joint and several answers of the above named defendants, W. P. Hammon and F. C. Van Deinse, fortifying their joint and several pleas, to the bill of complaint of the above named complainant, U. S. Oil & Land Company.

These defendants respectively, now and at all times hereinafter saving and reserving unto themselves all and all manner of benefit and advantage of exception or otherwise which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill of complaint contained, not waiving their joint and several pleas filed herewith to the said bill of complaint but wholly relying thereon, fortifying the said pleas for answer to the said bill of complaint, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them at this time to make answer unto, answering, say:

I. These defendants deny that the said complainant is the owner in fee simple absolute of, or has any right, title, interest or estate in law or in equity in, an undivided one-half, or any portion, of all or any that certain tract, piece or parcel of land situate, lying and being in the County of Santa Barbara, State of California, mentioned and described in paragraph "1st" of the said bill of complaint; deny that the claims, or any of the claims, of these defendants, or of any of the defendants, to an estate or interest in said tract, adverse to the complainant, are or is wrongful or unlawful or without any right whatever, or that said defendants have not, or that each of them has not, any right, title, estate or interest whatsoever in or to the undivided one-half of said tract, piece or parcel of land of which the said plaintiff claims to be the owner or in or to any part or portion thereof; deny that the judgment and decree set forth in paragraph "7th", and mentioned in paragraph "8th", of the said bill of complaint, ever became or was affirmed; deny that the said judgment and decree, ever or at all since

the dismissal by the Supreme Court of the State of California of that certain appeal therefrom mentioned in said paragraph "8th" of the said bill of complaint, has been or remained or still is in full force or in any force at all; deny that said judgment and decree was or is a final or any adjudication of all or any of the rights or interests of the parties, or any of them, to said action in which the same was rendered and entered, or otherwise, or at all; deny that all or any of the findings of fact or conclusions of law or the decision of the said Superior Court of the State of California, in and for the County of Santa Barbara, in the said action of John S. Bell v. George Staacke, et al., save the 'twenty-third' paragraph of the said findings, and the portion of the 'twenty-second' paragraph thereof expressly excepted by the Supreme Court of the State of California on the 28th day of June, 1903, in its judgment directing a new trial of the said action, as set forth in paragraph I of the said plea of these defendants, and paragraph "4" of the conclusions of law, and the 'additional findings', on the 9th day of July, 1901, or ever or at all, became or ever since or ever or at all have or has been final or conclusive or binding or of any effect at all upon all or any of the parties to said action, or their successors in interest, or the successors or successor in interest of any of them, or upon each or all or any of the heirs of said Thomas Bell, deceased, or upon any persons or person; deny that the jurisdiction or power of said Superior Court to hear or grant any motion for a new trial in said action was then, or at any time prior to the 22nd day of July, 1907, terminated forever or for any time or at all or ceased to exist or was at all impaired or affected; deny that then or at any time the said Superior Court, or any or all appellate courts of the State of California, or the Supreme Court of the State of California, lost or ceased to have any or full jurisdiction whatsoever or at all to entertain, hear, pass upon or review any notice of intention to move for a new trial or any motion for a new trial in said action or any order made in any such notice or

motion, or to modify, alter or change, or to modify, alter and change, in any way or manner or respect said judgment of said Superior Court; deny that all or any of the findings of fact and conclusions of law made, rendered and filed in and by said Superior Court as aforesaid or otherwise on the 6th day of March, 1901, and on the 7th day of June, 1901, or any of the said findings or conclusions, were or was or constituted the decision or the only decision, or any decision, or, save as expressly excepted by the Supreme Court of the State of California as aforesaid, were or was any portion of the decision in said action; deny that the transfer, grant and conveyance, or any of them, by George Staacke, made by and contained in the deed of conveyance described in paragraph "9th" of the said bill of complaint as delivered to C. A. Hunt as County Clerk and Clerk of said Superior Court, was delivered to said C. A. Hunt as such Clerk or otherwise or at all for or for the benefit of James L. Crittenden and Catherine M. Bell or either of them; deny that the same ever became or was an absolute, or any, grant or other deed, transfer or conveyance of all or any of the title or fee of, in or to, or of any interest in or to, said tract, piece or parcel of land of 10,067.2 acres, or any thereof, to said James L. Crittenden and Catherine M. Bell, or either of them, or vested in each or either of them an undivided one-half or the whole or any fraction of said lands or of each or every or any part or portion thereof; deny that the said grant, transfer or conveyance, or any part or portion thereof, became final, or at all effective for any purpose whatsoever save for the purpose of staying execution upon the said judgment and decree, on or about the 29th day of December, 1901, or at any time, or at all.

II. Deny that the payment of \$179,411.40, made by the said Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, to Mercantile Trust Company of San Francisco and San Francisco Savings Union, mentioned and described in paragraph "11th" of the said bill of com-

plaint, was made by the said administratrix voluntarily; deny that the said payment was made with the intent, or object, or design of depriving the complainant of its or any right or interest of, in or to said undivided one-half of 10,067.2 acres of land, or in or to any portion of the said land, or of its or any right, interest or equity in or to such portion of the proceeds of the sale of the said 10,067.2 acres of land as should or would remain after the sale of said lands by the said Mercantile Trust Company of San Francisco, under and in accordance with said judgment and decree in said action No. 4424, or otherwise; deny that the complainant had any such or any right, interest or equity of, in or to the said land, or any portion thereof, or the said proceeds, or any portion thereof; deny that with such or any such intent, purpose, object or design, or to obtain an unfair or unconscionable or any advantage over the said complainant, or any persons or person, the said Teresa Bell, upon making such payment, or otherwise, obtained from the said Mercantile Trust Company of San Francisco and the said San Francisco Savings Union, or either of them, the instrument in writing described in said paragraph "11th" of the said bill of complaint; deny that the making or execution of such conveyance or instrument was contrary to or in violation of said judgment in said action No. 4424, or of the provisions of said judgment or any thereof, or of the trust therein adjudged or declared, or of any trust, or was wrongful or fraudulent, or unlawful or in violation of the rights or interests of the U. S. Oil & Land Company under said judgment and decree in said action No. 4424 and under said Judgment dated June 29th, 1901, or under either of them, or of any right or interest of the said U. S. Oil & Land Company or of any other persons or person; deny that the said U. S. Oil & Land Company has or ever had any right or interest under the said two judgments, or either of them; deny that said pretended, and actual, sale and transfer by said Mercantile Trust Company of San Francisco was made under or in pursuance of a com-

bination or conspiracy entered into by the said Mercantile Trust Company of San Francisco, San Francisco Savings Union and said Teresa Bell, or any of them, with the wrongful, unlawful or fraudulent or any intent, object, purpose or design to defraud the said U. S. Oil & Land Company out of its or any right, title or interest in said 10,067.2 acres of land, or any portion thereof, or out of its or any right, title or interest in or to the proceeds, or any of the proceeds, of a sale of said land remaining after the payment of the sums of money ordered by said decree to be paid, or otherwise, or at all, or under or in pursuance of any combination or conspiracy at all, or to evade or defeat the provisions of said judgment and decree in said action No. 4424 requiring said land to be sold at public auction upon and after publication of any proposed sale in certain newspapers, or any provisions of said judgment and decree; deny that said pretended, and actual, sale and transfer was made secretly, or without any notice whatever thereof, or in pursuance or execution of the said or any combination or conspiracy or with the fraudulent, or any, intents, objects, purposes or designs aforesaid, or any of them; deny that said pretended, and actual, sale and transfer was a fraud upon the complainant, or any fraud at all or contrary to or in violation of said decree in said action No. 4424; deny that the claim made by the defendants in this action that the said pretended, and actual, deed and conveyance of May 26th, 1908, transferred and vested in said Teresa Bell, as such administratrix, the title of, in and to said tract of land consisting of 10,067.2 acres, including any and all rights, title and interest of said complainant U. S. Oil & Land Company, is without merit or wrongful or unlawful, or contrary to or in conflict with said judgment in said action No. 4424, or a fraud upon the said complainant, or any fraud at all, or was or is made with the wrongful or fraudulent or unlawful or any intents, purposes or designs aforesaid, or any of them, or of defrauding the said U. S. Oil & Land Company, or its successors or grantees or any of them,

out of its or any interest in or title to an undivided one-half, or any portion, of the said 10,067.2 acres of land, or any part thereof; deny that said Mercantile Trust Company of San Francisco has wholly or at all failed or neglected to perform its duties as trustee under said decree in said action No. 4424 or has, as alleged in the said bill of complaint, attempted to transfer or dispose of the said tract of 10,067.2 acres of land, or any thereof, contrary to or in violation of the trust declared or set forth in said decree in said action No. 4424, or with the wrongful, or unlawful, or fraudulent or any intents, objects, purposes or designs aforesaid, or any of them; deny that said George Staacke had no other right, title or interest whatever in or to said lands of any part thereof or to any of the proceeds of the sale of said lands or any part thereof than that of trustee for the benefit of the complainant, U. S. Oil & Land Company, its successors or assigns; deny that said George Henry Howard and O. H. Harshbarger, or either of them, had notice or knowledge of the title or any title of complainant to an undivided one-half of said 10,067.2 acres and tract of land, as pleaded and alleged in paragraph "14th" of the said bill of complaint, or to any interest in any portion of the said land, or of all or any of the facts and matters set forth and alleged in said paragraph "14th"; deny the truth or existence of any of the said facts and matters, as follows: deny that said tract, piece or parcel of land of 10,067.2 acres or any part thereof had been or was deeded or conveyed by Dwight W. Grover and Samuel Rosener, or either of them, on or about the 7th day of March, 1889, or at any time, in trust for the benefit of John S. Bell; deny that the said John S. Bell then, or at any time subsequent to the 23rd day of August, 1887, was the owner of the said tract, piece or parcel of land, or any part thereof; deny that said Grover and Rosener, or either of them had on and prior to March 7th, 1889, or at any time, agreed to reconvey said tract of land or any part thereof to said John S. Bell. Deny that said George Staacke received or accepted the deed and

conveyance executed to him by said Grover and Rosener and mentioned in paragraph "14th" of the said bill of complaint, or any deed, or held the title to said 10,067.2 acres of land, or any part thereof, as trustee for John S. Bell, and not otherwise, or at all, from the time he received the same to the time of his death, or at any time; deny that the said deed was made with the fraudulent or unlawful or any intent, object, purpose or design to defeat said, or any trust, upon which said land had been conveyed as aforesaid, or otherwise, by said Grover and Rosener to said George Staacke, or to deprive the plaintiff, or the successors in interest of John S. Bell, or any of them, of the benefits of said or any trust or of their or any rights thereunder or otherwise; deny that each and all, or any of the defendants, and particularly deny that these defendants, W. P. Hammon and F. C. van Deinse, or either of them, ever had any notice of the right, title and interest, or of any right, title or interest of the complainant of, in or to an undivided one-half, or any portion, of said tract or piece of land consisting of 10,067.2 acres of land, or any part thereof; deny that the entry of these defendants mentioned and described in paragraph "15th" of the said bill of complaint was wrongful or unlawful, or that the said entry or any acts of the said defendants on the said lands have been done with any wrongful or unlawful intent, object, purpose or design whatsoever, or will greatly or irreparably or at all injure or damage the complainant; deny that the complainant was or is entitled, as owner in fee or otherwise or at all, to any rents heretofore or hereafter to be collected from the tenants on the said tract of land; deny that on or about the 20th day of May, 1908, or at any time, the said Teresa Bell, Mercantile Trust Company of San Francisco and San Francisco Savings Union, or any of them, combined or conspired together, or at all, or made or entered into a secret or any combination or conspiracy to evade or defeat the said decree in said action No. 4424, or to deprive the said U. S. Oil & Land Company of its or any right, title or interest in

or to an undivided one-half, or any portion, of said tract of land consisting of 10,067.2 acres or of its or any interest in or right to the proceeds or all or any part thereof that might be obtained by or from a sale of said tract of 10,067.2 acres, or otherwise, or at all, or did in pursuance of said or any combination or conspiracy, or with the wrongful, unlawful or fraudulent or any intent, object, purpose or design of evading or defeating said decree in said action No. 4424 or of depriving said U. S. Oil & Land Company of its or any right, title or interest in or to an undivided one-half, or any portion, of said tract of land, or any part thereof, or of any proceeds that might be obtained from a sale thereof under said decree in said action No. 4424, or otherwise or at all, have or cause said deed dated May 26th, 1908, to be made or executed or thereafter recorded as shown, averred or alleged in paragraph "11th" of the said bill of complaint, or otherwise, or at all; deny that said deed was so as aforesaid, or otherwise, or at all, made, executed or delivered by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union under or in pursuance or execution of said or any wrongful or unlawful combination or conspiracy, or any combination or conspiracy whatsoever.

III. Deny all and all manner of unlawful combination and conspiracy wherewith, or with notice or knowledge whereof, they are by the said bill of complaint charged.

Wherefore, these defendants jointly and severally pray that the complainant's bill of complaint may be dismissed and that the defendant's have and recover their costs and disbursements herein.

Chauncey S. Goodrich,

Solicitor for the said defendants.

Northern District of California, City and County of San Francisco.—ss.

A. E. Boynton, being first duly sworn, deposes and says:

That he is the attorney in fact of W. P. Hammon, one of the defendants above named; that the said W.

P. Hammon and F. C. Van Deinse, another of the defendants above named, are at the present time without the State of California and in the State of New York, and for that reason affiant makes this affidavit of verification on behalf of the said W. P. Hammon; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein averred on his information or belief, and as to those matters that he believes it to be true.

A. E. Boynton,

Subscribed and sworn to before me this 28th day of November, A. D., 1912.

(Seal)

Ceda de Zaldo,

Notary Public in and for the City and County of San Francisco, State of California.

I hereby certify that in my opinion the foregoing answer is well founded in point of law.

Chauncey S. Goodrich.

Northern District of California, City and County of San Francisco.—ss.

Chauncey S. Goodrich, being first duly sworn, deposes and says:

That he is the Solicitor and attorney at law of W. P. Hammon and F. C. Van Deinse, the defendants above named; that both of the said defendants, W. P. Hammon and F. C. Van Deinse, are at the present time without the State of California and in the State of New York, and for that reason affiant makes this affidavit on behalf of the said defendants; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein averred on his information or belief, and as to those matters that he believes it to be true.

Chauncey S. Goodrich.

Subscribed and sworn to before me this 29th day of November, A. D., 1912.

(Seal)

Ceda de Zaldo,

Notary Public in and for the City and County of San Francisco, State of California.

Service of the within plea, and fortifying answer of the defendants W. P. Hammon and F. C. van Deinse, is hereby admitted this 29th day of November, 1912.

Richards & Carrier,
James L. Crittenden,
Solicitors for Complainant.

(Endorsed) Filed Dec. 2, 1912, Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Replication.

The replication of U. S. Oil & Land Company, above-named complainant, to the answer of the defendants hereinafter in this replication named:

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendants W. P. Hammon and F. C. Van Deinse, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed.

December 30, 1912.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley, of Counsel for Complainant.

The United States of America, State of California,
City and County of San Francisco, ss.

On this thirtieth day of December, 1912, before me personally appeared Alfred D. Crittenden, the Secretary and an officer of the U. S. Oil & Land Company, the above named complainant, and made solemn oath that he has read the foregoing Replication and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true; and that this verification is not made by the complainant because complainant is a corporation and is made by deponent because he is the Secretary and an officer of said corporation.

Alfred D. Crittenden.

Subscribed and sworn to before me this 30th day of December, 1912, at and in said City and County of San Francisco.

(Seal)

Flora Hall,
Notary Public in and for the City and County of San Francisco, State of California.

Service of the within Replication by copy thereof, is hereby admitted this 30th day of December, 1912.

Chauncey S. Goodrich,
Solicitor for Respts. W. P. Hammon and F. C. Van Deirse.

(Endorsed.) Filed Dec. 31, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Joint and Several Motion of Defendants W. P. Hammon and F. C. Van Deirse for Judgment on Plea and Replication.

Come now the above named defendants, W. P. Hammon and F. C. Van Deirse, and show to this Honorable Court as follows:

That these defendants on the 29th day of November, A. D. 1912, served, and on the 2nd day of December, A. D. 1912, filed herein their joint and several plea to the whole of the bill of complaint of the above named complainant, U. S. Oil & Land Company, together with their joint and several answer in support of such plea;

that on the 30th day of December, A. D. 1912, the said complainant served upon these defendants, and thereafter filed herein its alleged general replication to the said supporting answer; that the said complainant has not taken issue on the said plea.

Wherefore, these defendants jointly and severally move the Court for judgment on the said plea and replication, for the reason that the complainant has not taken issue on the said plea, and that the said replication is no reply in law thereto.

Chauncey S. Goodrich,

Solicitor for the said Defendants.

(Endorsed.) Filed March 10, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Joint and Several Motion of Defendants W. P. Hammon and F. C. Van Deinse for Judgment on Plea and Replication.

Come now the above named defendants, W. P. Hammon and F. C. Van Deinse, and show to this Honorable Court as follows:

That these defendants on the 29th day of November, A. D. 1912, served, and on the 2nd day of December, A. D. 1912, filed, herein their joint and several plea to the whole of the bill of complaint of the above named complainant, U. S. Oil & Land Company, together with their joint and several answer in support of such plea; that on the 30th day of December A. D. 1912, the said complainant served upon these defendants and thereafter filed herein its alleged general replication to the said supporting answer; that the said complainant has not taken issue on the said plea;

Wherefore, these defendants jointly and severally move the Court for judgment on the said plea and replication, and for the reason that the complainant has not taken issue on the said plea, and that the said replication is no reply in law thereto.

Chauncey S. Goodrich,

Solicitor for the said Defendants.

(Endorsed.) Filed March 10, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

At a stated term, to-wit: the January Term, A. D. 1913, of the District Court of the United States for the Southern District of California, Southern Division, held in the Court room thereof at Los Angeles on Monday, the 10th day of March, 1913:

Present—The Honorable Frank H. Rudkin, District Judge. No. 140 Civil S. D. U. S. Oil & Land Company, Complainant, vs. Teresa Bell, etc., et al., Defendants.

This cause coming on this day to be heard on the joint and several pleas of defendants W. P. Hammon and F. C. Van Deinse to the bill of complaint; James L. Crittenden, Esq., and C. F. Carrier, Esq., appearing as counsel for complainant; Chauncey S. Goodrich, Esq., appearing as counsel for defendants; and the joint and several motion of defendants W. P. Hammon and F. C. Van Deinse for judgment in favor of defendants on the plea of said defendants and complainant's replication thereto having been filed in open Court; and said motion for judgment having been argued in support thereof by Chauncey S. Goodrich, Esq., of counsel for defendants, and in opposition thereto by James L. Crittenden, Esq., of counsel for complainant, and said cause having been submitted to the Court for its consideration and decision on said motion and the oral argument thereof; it is now by the Court ordered that said motion for judgment on the pleadings be, and the same hereby is denied, and that defendants be and they hereby are assigned to answer the bill of complaint on or before April 7th, 1913; and counsel having thereafter agreed to answer earlier than said date; it is ordered that said cause be and the same hereby is continued until Wednesday, the 19th day of March, 1913, at 10:30 o'clock a. m., to be heard separately on the question of certain judgments in the State Courts, provided said answer shall have been filed theretofore.

(Endorsed.) Copy Order Denying Motion for Judgment on the Pleadings. Filed July 23, 1913. Wm. M.

Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

At a stated term, to-wit: the January Term, A. D. 1913, of the District Court of the United States, in and for the Southern District of California, Southern Division, held in the Court room thereof at Los Angeles on Monday, the 10th day of March, in the year of our Lord, one thousand nine hundred and thirteen:

Present—The Honorable Frank H. Rudkin, District Judge. No. 140 Civil S. D. U. S. Oil & Land Company, Complainant, vs. Teresa Bell, etc., et al., Defendants.

This cause coming on this day to be heard on the motion of defendants Teresa Bell et al. for hearing on the pleas and answer of said defendants, C. F. Carrier, Esq., and James L. Crittenden, Esq., appearing as counsel for complainant; T. Z. Blakeman, Esq., and Peter J. Crosby, Esq., appearing as counsel for defendants Teresa Bell et al.; and said motion having been argued in support thereof by T. Z. Blakeman, Esq., and Peter J. Crosby, Esq., of counsel for said defendants, and in opposition thereto by James L. Crittenden, Esq., of counsel for complainant, and said cause having been submitted to the Court for its consideration and decision on said motion upon the oral argument thereof; it is ordered that said motion be and the same hereby is denied, and that said defendants be and they hereby are assigned to answer the bill of complaint; and it is further ordered that said cause be and the same hereby is continued until Wednesday, the 19th day of March, 1913, at 10:30 o'clock a. m., to be heard separately on the question of certain judgments in the State Courts, providing said answer shall have been filed theretofore.

(Endorsed.) Copy Order Denying Motion for Hearing on the Pleas, etc. Filed July 23, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Joint and Several Answer of W. P. Hammon and F. C. van Deinse.

These defendants, W. P. Hammon and F. C. van Deinse, now and at all times hereafter saving and reserving unto themselves all and all manner of benefit and advantage of exception or otherwise which can or may be had or taken to the many errors, uncertainties and other imperfections in the complainant's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, jointly and severally answering say:

As a first defense to the whole of the said bill of complaint, heretofore presentable by plea in bar, these defendants say:

I. That subsequent to the 6th day of March, 1901, and within the time and in the manner permitted and prescribed by the laws of the State of California, George Staacke, individually, and Teresa Bell, as special administratrix of the Estate of Thomas Bell, deceased, defendants in the action mentioned and described in paragraph "7th" of the said bill of complaint, gave notice of their intention to move for a new trial of the said action; that thereafter on the 7th day of June, 1901, the said motion for a new trial was made by the said defendants in the said action, and thereupon and on the said day the Superior Court of the State of California, in and for the County of Santa Barbara, made and entered in the said action its order denying the said motion; that thereafter, on the 8th day of June, 1901, and synchronously with the service and filing of their notice of appeal from the decree in the said action, mentioned and described in paragraph "8th" of the said bill of complaint, and within the time and in the manner permitted and prescribed by the laws of the State of California, the said George Staacke, individually, and Teresa Bell, as special administratrix of the Estate of Thomas Bell, deceased, served and filed in the said action their notice of appeal to the Supreme Court of the State of California from the said order denying their said motion for a new trial, and thereafter prosecuted such appeal; that thereafter and prior to the 16th day of Sep-

tember, 1902, John S. Bell, the plaintiff in the said action and the respondent to both the said appeals, moved the said Supreme Court of the State of California to dismiss both the said appeals; that the said Supreme Court on the 16th day of September, 1902, after hearing of the said motions of the said plaintiff and respondent, made and entered its order and judgment dismissing the said appeal from the decree in the said action, on the sole ground that notice of such appeal had been prematurely given by the appellants, but denying the said motion to dismiss the said appeal from the said order denying the said motion for a new trial of the said action; that thereafter the said defendants continued to prosecute their said appeal from the said order denying the said motion for a new trial of the said action; that on the 30th day of November, 1903, after hearing of the said appeal, the said Supreme Court of the State of California made and entered its order and judgment reversing the said order denying the said motion for a new trial and remanding the said action to the said Superior Court of the State of California, in and for the County of Santa Barbara; that on the 28th day of December, 1903, the said Supreme Court amended its said judgment, reversing the said order by its judgment and decree then made and entered, so that the said order and judgment, as so amended on the said 28th day of December, 1903, was and is in the words and figures as follows:

"In the Supreme Court of the State of California.
L. A. No. 1115. Bank.

John S. Bell, Resp., vs. George Staacke et al., App.
On Appeal From the Superior Court in and for the
County of Santa Barbara.

And now at this day this cause being called and having been heretofore submitted and taken under advisement and all and singular the law and the premises being fully considered the opinion of the Court herein is delivered by the Court.

Whereupon, it was adjudged and decreed by the Court on the 30th day of November, 1903, that the order

of the Superior Court in and for the County of Santa Barbara in the above entitled cause denying the appellant's motion for a new trial is reversed and cause remanded subsequently on the 28th day of December, 1903, the judgment heretofore rendered herein in this Court is hereby amended so as to read as follows:

The order denying the motion for a new trial is reversed except as to the issues covered by the twenty-third paragraph of the findings, to-wit: 'That John S. Bell was indebted to Thomas Bell on the 16th day of October, 1892, the day when Thomas Bell died, on account of advances of money and interest thereon in the sum of \$52,120.15 and paragraph 4 of the conclusions of law and except as to the issues covered by the additional findings and cause remanded for new trial of all other issues and appellant to recover costs of appeal.'

That the said Supreme Court of the State of California, by its judgment as so amended, ordered a new trial, by the said Superior Court of the State of California, in and for the County of Santa Barbara, of all the issues made by the pleadings in the said action save those covered by the findings particularly excepted by the said decree of amendment of the said Supreme Court; that, under the laws of the State of California, the said judgment ordering as aforesaid a new trial of the said action forever vacated the said decree in the said action theretofore made by the said Superior Court of the State of California, in and for the County of Santa Barbara, mentioned and described in paragraph "7th" of the said bill of complaint.

II. That the new trial of the said action ordered as aforesaid by the said Supreme Court of the State of California was had in the said Superior Court of the State of California, in and for the County of Santa Barbara, during the months of April and May, 1904; that at such new trial the plaintiff in the said action, the said John S. Bell, and his grantee, James L. Crittenden, the alleged grantor of the complainant herein, U. S. Oil & Land Company, appeared and participated in the re-trial of the said action; that thereafter all of

the issues in the said action as to which a new trial had been ordered as aforesaid by the said Supreme Court, were submitted by the respective parties to the said action, including the said plaintiff therein, John S. Bell, and by the said James L. Crittenden, to the said Superior Court for decision; that thereafter, on the 17th day of October, 1904, the said Superior Court made, and on the 26th day of October, 1904, filed, its decision in the said action, covering the said issues, which said decision was and is in the words and figures as follows:

"In the Superior Court of the County of Santa Barbara, State of California. No. 2826.

John S. Bell, Plaintiff, vs. George Staacke, Teresa Bell as Administratrix with the will annexed of the Estate of Thomas Bell, deceased, and Louis Jones, Defendants.

Findings.

The trial of the issues, as to which a new trial was ordered by the Supreme Court, in the above-entitled action, came on regularly before the Court sitting without a jury. The plaintiff appeared by his attorneys Jas. L. Crittenden, Esq., and Messrs. Richards & Carrier; T. Z. Blakeman, Esq., with whom was also associated Messrs. Canfield & Starbuck, appeared for the defendant Teresa Bell as administratrix with the will annexed of the Estate of Thomas Bell, deceased, and the defendant George Staacke appeared by his attorneys Messrs. Canfield & Starbuck. The cross-complaint of the defendants was dismissed as to the defendant Louis Jones, and the trial of the action as between the plaintiff and the said defendant Jones was continued.

An order of Court was duly made and entered substituting Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, as defendant in the place and stead of Teresa Bell as special administratrix of the said estate of Thomas Bell, deceased, the said Teresa Bell as said special administratrix having been heretofore by the order of the Court duly made and entered substituted as defendant in the place and stead of John W. C. Maxwell and George

Staacke as executors of the last will of Thomas Bell, deceased.

Evidence oral and documentary was introduced in behalf of the respective parties aforesaid and thereupon after argument by the attorneys aforesaid for the respective parties, the whole case upon the issues aforesaid was submitted to the Court for its decision.

And the Court having considered the case, and being fully advised in the premises, makes its findings of fact and conclusions of law as follows:

The Court finds:

1. That on August 23d, 1887, plaintiff was the owner of the tract of land in said County of Santa Barbara bounded and described as follows, to-wit:

Property hereinbefore described on pages:

That on the 23d day of August, 1887, Thomas Bell was the owner of the tract of land in said County of Santa Barbara, being that portion of the Rancho de Los Alamos which is bounded and described as follows, to-wit:

(Property described on pages 6, 7, 8 and 9.)

That on said 23d day of August, the plaintiff and said Thomas Bell sold and conveyed to Dwight W. Grover said two tracts of land for the total sum and price of three hundred and fifty thousand dollars, of which \$270,000 was the price of the tract of land hereinabove first described, and \$80,000 the price of the other tract; \$70,000 of the total price was paid in cash and the balance of \$280,000 was paid by four notes executed by said Grover in favor of said Thomas Bell for \$54,000 each, dated on said day, and payable in one, two, three and four years respectively from their date, and secured by a mortgage executed by said Grover on said tract of land first above described in favor of Thomas Bell, and by four promissory notes executed by said Grover in favor of said Thomas Bell for \$16,000 each, dated on said day and payable in one, two, three and four years respectively from their date, and secured by a mortgage executed by said Grover on said tract of land second above described in favor of said Thomas Bell.

list:

as follows:

11. after the word "pages:" therein

~~insert~~ the words and figures following, to-wit:

"185 and 184 of this Transcript (being the
12,000-acre tract)."

12 ~~strike out~~ the words and figures "6, 7, 8 and
and

~~insert~~ in the place and stead thereof the words and
figures following, to-wit:

"186 and 187 of this Transcript (being the
4,000-acre tract)."

That on the 27th day of August, 1887, the plaintiff and said Thomas Bell executed and delivered to each other an agreement in writing in words and figures following, to-wit:

"AGREEMENT made this twenty-seventh day of August, A. D. 1887, between Thomas Bell and John S. Bell, both of the City and County of San Francisco, State of California,

"WHEREAS, the said parties sold and conveyed on August twenty-third, 1887, to Dwight W. Grover fourteen thousand acres of land for the sum of Three hundred and fifty thousand dollars, that is, at twenty-five dollars per acre, for one-fifth cash and four-fifths mortgages. Of said land, Thomas Bell owned four thousand acres and John S. Bell ten thousand acres. By an understanding between them John S. Bell was to get two hundred and seventy thousand dollars, being twenty-seven dollars per acre and Thomas Bell eighty thousand dollars, being twenty dollars per acre. The cash payment was received by Thomas Bell except the sum of six hundred dollars paid to John S. Bell and the mortgages, namely, two hundred and sixteen thousand dollars on the land of John S. Bell, and sixty-four thousand dollars on that of Thomas Bell, were made to Thomas Bell.

"AND WHEREAS, the said Thomas Bell has heretofore from time to time made loans and advances to the said John S. Bell and at his request and he may hereafter make further loans and advances to said John S. Bell and the said Thomas Bell has credited John S. Bell's proportion of the cash payment to him against moneys owing by him and an accounting having been this day had between the said Thomas Bell and John S. Bell of and concerning all claims and demands between them and a statement thereof which is hereto annexed having been made, examined and found correct, and it is settled that the said John S. Bell is now indebted to said Thomas Bell in the sum of Twenty-five thousand five hundred and twenty-nine 5-100 dollars in United States gold coin which sum is to bear interest from this date at the rate of six per cent per annum.

"NOW it is agreed between said parties that the said Thomas Bell shall hold said notes and said mortgage for two hundred and sixteen thousand dollars made by Dwight W. Grover to him as security until he has been repaid all present and any future loans and advances which he may see fit to make to said John S. Bell, with like interest from the date of making the same after which he shall, on demand, assign the same to said John S. Bell.

"This agreement shall bind and be for the benefits of the heirs, executors, administrator and assigns of both of said parties.

"Witness our hands the day and year first above written.

Thomas Bell
John S. Bell."

That on or about the 25th day of August, 1887, the said Dwight W. Grover granted, bargained, sold and conveyed by deed to Samuel Rosener an undivided 3-5 of all the land and real property hereinbefore described.

2. That neither the said Grover nor the said Rosener made payment of the first of said four notes of \$54,000 each or of the first of said four notes of \$16,000 each or of any part or portion thereof, nor did they, the said Grover and Rosener, or either of them, pay any part or portion of any of said notes given as aforesaid for the balance of the purchase price of the said two tracts of land.

That after the maturity of the first of the said notes and prior to the 7th day of March, 1889, it was agreed between the said Thomas Bell and the said Grover and Rosener that the said Grover and Rosener should convey to George Staacke, who was the confidential clerk and agent of the said Thomas Bell, the land hereinabove first described, except such portions thereof as the said Grover and Rosener had sold, and that said Grover and Rosener should assign and transfer unto said Thomas Bell all notes and mortgages held and taken by them for deferred payments of the purchase price of such portions of said tract of land hereinabove first described as they,

the said Grover and Rosener, had sold, and that the said Thomas Bell, should in consideration thereof, release the said Grover and Rosener from the obligation of said four notes of \$54,000 each and of the mortgage given as aforesaid to secure the payment thereof.

That on March 7th, 1889, in pursuance of the agreement last aforesaid, the said Grover and Rosener, with the knowledge and consent of the plaintiff John S. Bell, and for the purpose of obtaining a release from the obligation of said four notes of \$54,000 each and of the said mortgage to secure them, and for no other purpose whatever, executed a deed to said George Staacke of all the tract of land first hereinabove and in said mortgage described, excepting therefrom all the town lots sold and conveyed by deed by said John S. Bell prior to the 7th day of April, 1887, the same being laid down and shown upon a certain map entitled "Map of the Town of Los Alamos surveyed for J. B. Shaw and John S. Bell, September 15, 1876, W. W. Bagster, surveyor," also excepting therefrom the land conveyed or donated prior to June 7th, 1887, by John S. Bell for county roads, streets and railroads and cemetery plot adjoining said town of Los Alamos conveyed by said John S. Bell, also excepting therefrom certain described parcels of land sold and conveyed by Dwight W. Grover and Samuel Rosener since August 23d, 1887.

That on the 7th of March, 1889, and in pursuance of the agreement aforesaid between the said Grover and Rosener, and Thomas Bell, the said Grover and Rosener, with the knowledge and consent of the said John S. Bell, assigned and transferred to the said Thomas Bell all notes and mortgages taken and held by them as security for the deferred payments on portions of the said tract of land hereinabove first described which they, said Grover and Rosener, had sold since the 23d day of August, 1887.

That upon the delivery of the said deed of March 7th, 1889, by Grover and Rosener to said George Staacke, and in consideration thereof, the said Thomas Bell delivered to said Grover and Rosener the said four notes

for \$54,000 each secured by the said mortgage on the tract of land hereinabove first described, and released and satisfied said mortgage and dismissed the suit which he had begun for the foreclosure thereof.

That the said George Staacke paid nothing to said Grover and Rosener for said deed and conveyance to him, but was the nominee of said Thomas Bell in regard thereto, and accepted said deed and conveyance solely as the nominee of said Thomas Bell and in trust to hold the land thereby conveyed first for the use and benefit of Thomas Bell, to-wit: as security for the payment by the plaintiff John S. Bell to said Thomas Bell of the balance then due to said Thomas Bell upon all sums of money which had theretofore been advanced and loaned by the said Thomas Bell to the said John S. Bell and for all sums of money which the said Thomas Bell should thereafter loan or advance to the said John S. Bell, with interest thereon, and second for the use and benefit of the said John S. Bell, to-wit: to convey to the said John S. Bell the said tract of land or all that remained thereof after the payment of all sums then due to said Thomas Bell by said John S. Bell, and all advances and loans thereafter made by said Thomas Bell to said John S. Bell.

That at the time of the said execution of the said conveyance by said Grover and Rosener to said Staacke, it was agreed by and between the plaintiff John S. Bell and the said Thomas Bell that said Staacke should hold the land hereinabove first described, with the exceptions therefrom hereinabove noted, *as security* for the payment by the plaintiff to said Thomas Bell of all sums of money which had theretofore been advanced by said Thomas Bell to the plaintiff, or which were then due and owing by said John S. Bell to said Thomas Bell, and for all sums of money which the said Thomas Bell should thereafter advance or loan to the said John S. Bell, with interest thereon; and that after the payment of all such sums with interest thereon by John S. Bell to the said Thomas Bell, the said Staacke should convey the said land, hereinabove first described, or what remained

thereof, to the said John S. Bell.

That after the date of the said agreement between John S. Bell and Thomas Bell, dated August 27th, 1887, and until the date of his death, the said Thomas Bell continued from time to time at the request of John S. Bell to make advances and loans of money to him, the said John S. Bell, upon the security, first of the said four notes of \$54,000 each and the mortgage made to secure the same, and after the surrender thereof and the conveyance of the said tract of land hereinabove first described by Grover and Rosener to George Staacke upon the security of the said tract of land; and the said John S. Bell accepted and received all the said advances and loans of money by the said Thomas Bell to him with the knowledge at the time the said loans and advances were made, that Thomas Bell made the said loans and advances upon the security aforesaid.

That by judgment heretofore, to-wit: on the 9th day of July, 1901, made and entered in this action upon the cross-complaint of the defendant the said administratrix of the estate of Thomas Bell, deceased, it was determined that there was at the date of the death of Thomas Bell, to-wit: on October 16th, 1892, a balance due from said John S. Bell, the plaintiff herein, to the said Thomas Bell in the sum of Fifty-two thousand one hundred and twenty and 15-100 (\$52,120.15) dollars for the said loans and advances made by the said Thomas Bell to the said John S. Bell, including the said balance of \$25,529.05 mentioned in the said agreement of August 27th, 1887, (with interest on said balance and on said other loans and advances according to the said agreement of August 27th, 1887. And the said defendant, the said Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, recovered in this action of the plaintiff John S. Bell, on the 9th day of July, 1901, judgment against the said John S. Bell for the said balance of \$52,120.15, and for interest thereon at the rate of seven per cent per annum from the 16th day of October, 1892.

That the said Grover and Rosener upon the execution

of said deed of March 7th, 1889, by them to said George Staacke, delivered possession to said George Staacke of all the tract of land hereinabove first described, except the portions thereof mentioned in said deed as reserved and excepted, but the possession of said Staacke was at all times thereafter and until the death of Thomas Bell, subject to the control of said Thomas Bell, and said Thomas Bell at all times after the execution of said deed by Grover and Rosener to Staacke, with the knowledge and consent of John S. Bell, exercised control and management over said tract of land and caused the rents and products thereof to be delivered to him at San Francisco. That the said rents and the proceeds of said products were by Thomas Bell placed to the credit of John S. Bell in his account which embraced the said loans and advances, and the said control and management of Thomas Bell was only because of and in aid of the lien upon said land existing in his favor for the balance due him upon said loans and advances made and to be made to said John S. Bell.

That no part of the said sum of \$52,120.15, or of the interest thereon, has been paid. That the whole of the said principal sum of \$52,120.15, and interest thereon from the 16th day of October, 1892, amounting to the sum of \$43,780.92 at the date hereof, is due and payable to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, upon the cross-complaint herein, and a lien exists in favor of the said defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, upon the said tract of land hereinabove first described, and conveyed to George Staacke by said deed of March 7th, 1889, for the payment of the said principal sum and interest, amounting to the sum of Ninety-five thousand nine hundred and one and 7-100 (\$95,901.07) dollars, and for the accruing interest on the said sum of \$52,120.15.

3. That the said deed of March 7th, 1889, from Grover and Rosener to George Staacke was not executed and delivered by Grover and Rosener with the intent

and for the purpose of conveying back and in trust to convey back to the plaintiff the tract of land hereinabove first and in said deed described, and said deed was not accepted and received by said Geo. Staacke in trust for said purpose, except that said George Staacke did accept and receive the said deed in trust to convey to the plaintiff the said tract of land after payment had been made by the plaintiff to Thomas Bell of all sums due by him to Thomas Bell for moneys loaned and advanced, and to be loaned and advanced, to him by said Thomas Bell. That said George Staacke does not hold the naked legal title to said tract of land in trust for the purpose of conveying and to convey and deed the same to the plaintiff and for no other purpose.

That the plaintiff did not on or about the 7th day of March, 1889, enter into or take actual possession of all or any portion of the land mentioned and described in the plaintiff's amended and supplemental complaint, and the plaintiff has not, ever since the 7th day of March, 1889, and down to the appointment of a receiver in this action, or during any part of said time, remained or been in the actual possession, adverse or otherwise, as owner in fee simple or otherwise of said land or any portion thereof.

That the defendant George Staacke did not, in violation of any trust, or without the knowledge or consent of plaintiff, borrow of the San Francisco Savings Union \$60,000, and did not in violation of any trust or trust deed convey said land in trust to secure the payment of said \$60,000.

That George Staacke and Thomas Bell did not appropriate to their own use said \$60,000, but the whole of said sum, less the cost of Abstract and execution and recording of papers, was by Thomas Bell placed to the credit of plaintiff in his said account, and the plaintiff on February 12th, 1892, with full knowledge of the borrowing of said sum of \$60,000, ratified and approved the same and accepted and approved the crediting of the proceeds thereof to him in his account with said Thomas Bell.

That said John S. Bell was not the owner of the four notes of \$54,000 each executed by said Grover to Thomas Bell, and the mortgage given to secure them, except as the same were subject to the agreement of August 27th, 1887, between John S. and Thomas Bell and hereinbefore set out. That said four notes and mortgages to secure them were not made and executed to Thomas Bell for the purpose of rendering the execution of releases and partial releases more convenient or easy.

It is not true that on or about the 6th of March, 1889, an oral agreement was made and entered into by and between said Grover, Rosener, John S. Bell and Thomas Bell, that said Grover and Rosener should deed and convey back to John S. Bell all or any of the land mentioned in the Amended and Supplemental Complaint, nor is it true that, hereafter and on or about the 6th day of March, 1889, John S. Bell and Thomas Bell made and entered into an oral agreement that any of said land should be conveyed back to John S. Bell by being first deeded and conveyed by said Grover and Rosener to George Staacke and then by said Staacke to John S. Bell.

That the deed of March 7th, 1889, was not made, executed and delivered to George Staacke, nor transfer of the 10,000 acre tract described therein made to said Staacke, with the intent and for the sole purpose of conveying and in trust to convey back to the plaintiff the said 10,000 acre tract or any part thereof, nor did said Staacke accept such conveyance for such sole purpose.

That the agreement of August 27th, 1887, between John S. and Thomas Bell and hereinabove set out, was never rescinded by either, or by consent of both.

4. That the defendant George Staacke did not pay or give any consideration for the deed of conveyance of the tract of land, hereinabove secondly described, by the said Grover and Rosener to him, of date March 7th, 1889, but the said deed of said tract was made by the said Grover and Rosener to the said Staacke at the request of Thomas Bell, and in consideration of the sur-

render by Thomas Bell to the said Grover and Rosener of the said four notes of \$16,000 each, and of the release of the mortgage given by the said Grover to secure the said notes and the dismissal of the suit brought by Thomas Bell for the foreclosure of the said mortgage. That the possession of the said tract of land last hereinabove referred to was delivered by the said Grover and Rosener to the said George Staacke who was at the time the confidential clerk and agent of said Thomas Bell, and the said Thomas Bell thereafter continuously controlled and managed the said tract of land received all the rents and profits thereof.

5. That on the 8th day of March, 1893, the plaintiff herein caused to be filed and recorded in the office of the County Recorder of the said County of Santa Barbara a notice of the pendency of this suit, containing the names of the parties thereto, the object thereof, and also a true and correct description of the land and premises affected thereby.

Conclusions of Law.

The Court concludes that a lien exists upon the tract of land in the findings hereinabove first described, and conveyed by the deed of Grover and Rosener of March 7th, 1889, to George Staacke, in favor of the defendant Teresa Bell as the administratrix with the will annexed of the estate of Thomas Bell, deceased, for the payment to her of the sum of Ninety-five thousand nine hundred and one and 7-100 (\$95,901.07) dollars and accruing interest of \$52,120.15 thereof; And that the said administratrix defendant is entitled to a judgment of the Court in this action foreclosing the said lien and directing the sale to be made of the said tract of land, and out of the proceeds of such sale that there be paid first, the costs and expenses of such sale; second, the costs of suit and an appeal taxed in favor of the said defendant the administratrix and defendant George Staacke, and then the amount of the said lien, to-wit: the said sum of \$95,901.07 and accruing interest. And the balance of the proceeds of the sale, if any, to be paid to the plaintiff or his attorneys; And directing a judgment for deficiency

if the sale of the said land does not realize sufficient to pay said costs and expenses of sale and amount due the said defendant the administratrix, to be entered against the plaintiff John S. Bell.

The said defendant Teresa Bell as the administratrix with the will annexed of the estate of Thomas Bell, deceased, is further entitled to a decree directing the defendant George Staacke to convey by proper and sufficient deed of conveyance to her as such administratrix the tract of land in the findings hereinabove secondly described.

Let judgment be entered accordingly.

Dated this the 17th day of October, 1904.

J. W. Taggart,

Judge of said Superior Court.

Filed October 26th, 1904, C. A. Hunt, Clerk."

That on the said 17th day of October, 1904, the said Superior Court made, and on the said 26th day of October, 1904, filed, and on the 28th day of October, 1904, entered, its judgment and decree, and order of sale, in the said action, in accordance with its said decision, which said judgment and decree, and order of sale, was an dis in the words and figures as follows:

"In the Superior Court of the County of Santa Barbara, State of California.

John S. Bell, Plaintiff,

vs.

No. 2826

George Staacke, Teresa Bell as the Administratrix with the Will annexed of the Estate of Thomas Bell, deceased, and Louis Jones, Defendants.

Decree and Order of Sale.

The Court having made and filed herein its Findings of fact and conclusions of law, it is now by the Court ORDERED, ADJUDGED AND DECREED that there is now due and owing from the plaintiff John S. Bell to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, the sum of Ninety-five thousand one hundred and one and 7-100 (\$95,901.07) dollars, and that the said plaintiff John S. Bell is personally liable for the whole amount

thereof. That the said sum of \$95,901.07, and the costs of the said defendants to be taxed herein and their costs on appeal taxed at sum of \$608.50, is a valid lien upon the land and premises hereinafter set forth and described. That the defendant George Staacke holds the legal title of the said land and premises in trust, first, as security for the payment of the sum aforesaid and the costs of the said defendants to be taxed herein, and second, in trust for the use and benefit of the plaintiff John S. Bell.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all and singular the land and premises first mentioned in the Complaint and in the findings herein, and hereafter described, or so much thereof as may be sufficient to raise the amount due to the said defendant as aforesaid, and interest and costs of suit and expenses of sale, and which may be sold separately without material injury to the parties interested, be sold at public auction by the Commissioner herein appointed to make such sale, in the manner prescribed by law and according to the course and practice of this Court, and that the said Commissioner after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of the said land and premises.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JESSE L. HURLBUT, of the City of Santa Barbara, be and he is hereby appointed a Commissioner of this Court to sell the said land and premises hereinafter described, and it is further ORDERED that before entering upon his duties as such Commissioner he shall take the oath and give an undertaking in the sum of One Thousand Dollars, all as required by law. That the said Commissioner, out of the proceeds of the said sale, retain his fees and disbursements and pay to the said defendants George Staacke and Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, or to their respective attorneys, out of the proceeds of the said sale the sum of \$1085.15, costs of the said defendants George Staacke and Teresa Bell as administratrix with the will annexed of the estate

of Thomas Bell, deceased, in this suit and on appeal and accrued interest, and also pay to the said defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, or to her attorney, from the proceeds of the said sale the further sum of \$95,901.07, the amount so found to be due as aforesaid, together with interest on \$52,120.15 of said last sum at the rate of 7 per cent per annum from the date of this decree or so much thereof as the said proceeds of the sale will pay. That the plaintiff and all persons claiming or to claim from or under him, and all persons having liens subsequent to said conveyance of March 7th, 1889, by Grover and Rosener to George Staacke, by judgment or decree upon the land hereinafter described, and their personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree and their heirs or personal representatives, and all persons claiming to have acquired any estate or interest in said premises subsequent to the filing of the notice of the pendency of this action with the Recorder of the County of Santa Barbara, be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said land and premises and every part and parcel thereof from and after the delivery of said Commissioner's deed.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the purchaser or purchasers of the said land and premises at such sale be let into possession thereof and that any of the parties to this action who may be in possession of said premises or any part thereof, and any person who since the commencement of this action, has come into possession under them, or either of them, deliver possession thereof to said purchaser or purchasers, on production of the Commissioner's deed for such land and premises, or any part thereof.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if the moneys arising from the said sale shall be insufficient to pay the amount so found due the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased,

as above stated with interest and costs as herein provided, and expenses of sale as aforesaid, said commissioner specify the amount of such deficiency and balance due the said defendant in his return of said sale, and that on the coming in and filing of said return, the Clerk of this Court docket a judgment for such balance against the plaintiff John S. Bell, and that the said plaintiff pay to the said defendant the amount of such deficiency and judgment with interest thereon at the rate of 7 per cent per annum from the date of said last mentioned return and judgment, and that the said defendant the administratrix have execution therefore.

The lands and premises directed to be sold by this decree are situate in the County of Santa Barbara, State of California, and bounded and particularly described as follows:

(Property described on pages 6, 7, 8 and 9.)

IT IS FURTHER ORDEDED, ADJUDGED AND DECREED that the defendant George Staacke, upon tender to him, execute and deliver to the defendant Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased, a deed of conveyance of the tract of land in the findings herein secondly described, to-wit: All that tract of land situate in the County of Santa Barbara, State of California, bounded and described as follows, to-wit:

Commencing at the southeast corner of the tract of land surveyed and conveyed by Jose Antonio de la Guerra to Jose Antonio Estrada by a deed of conveyance dated August 16th, A. D. 1867, and thence running due east unto the westerly line of the tract of land conveyed by the said Jose Antonio de la Guerra to Albert Packard on the 26th day of June, A. D. 1867; thence running along the said westerly line of the land last above mentioned to its intersection with the Northern boundary line of the "Rancho de Los Alamos;" thence running along the said northern boundary line to its intersection with the northeast corner of the said tract of land conveyed by the said Jose de la Guerra to the said Jose Antonio Estrada; thence running southerly

along the eastern boundary line of said tract of land of said Jose Antonio Estrada to the place of beginning, containing about Four Thousand acres of land.

FURTHER ORDERED AND ADJUDGED that the defendants have and recover of the plaintiff their costs in the sum of \$476.65.

Dated this 17th day of October, 1904.

J. W. Taggart, Judge of said Superior Court.

Filed October 26th, 1904, C. A. Hunt, Clerk."

That the said judgment and decree, and order of sale, has never been amended, modified, vacated or set aside or in any way altered, impaired or affected, and the same became and is final and conclusive upon the parties to the said action and their assigns.

That the plaintiff in the said action, the said John S. Bell, gave notice of his intention to move for a new trial of the said action, and thereafter in pursuance of such notice made his motion for such new trial; that thereafter and after hearing of the said motion, and on or about the 24th day of June, 1905, the said Superior Court of the State of California, in and for the County of Santa Barbara, made, filed and entered its order in the said action denying the said motion for a new trial thereof; that the plaintiff in the said action, the said John S. Bell, and his said grantee, James L. Crittenden, the alleged grantor of the complainant herein, thereupon made and prosecuted two several appeals to the said Supreme Court of the State of California, one thereof from the said judgment and decree, and order of sale, made as aforesaid on the 17th day of October, 1904, the other thereof from the said order denying the motion of the said plaintiff for a new trial of the said action, made as aforesaid on or about the 24th day of June, 1905.

III. That thereafter and prior to the 2nd day of January, 1906, the defendant herein Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, defendant in the said action and respondent to both the said appeals, moved the said Supreme Court of the State of California to dismiss the

said appeal of the said John S. Bell from the said judgment and decree, and order of sale, made, filed and entered as aforesaid in the said action; that the said Supreme Court on the 2nd day of January, 1906, after hearing of the said motion of the said defendant and respondent, made and entered its order and judgment dismissing the said appeal of the said plaintiff and appellant, John S. Bell, from the said judgment and decree, and order of sale; that on the 22nd day of July, 1907, after hearing of the said appeal of the said John S. Bell from the said order denying his said motion for a new trial of the said action, the said Supreme Court made and entered its order and judgment affirming the said order denying the said motion.

IV. That none of the said four several judgments, orders and decrees of the Supreme Court of the State of California, made as aforesaid on the 16th day of September, 1902, the 28th day of December, 1903, the 2nd day of January, 1906, and the 22nd day of July, 1907, respectively, has ever been reversed, amended, modified or in any way altered, or its effect controlled or otherwise at all affected; that the same, since the respective dates thereof, have all been and now are final; that the effect thereof was and is to reverse, vacate and render void and of no effect that certain judgment and decree of the said Superior Court of the State of California, in and for the County of Santa Barbara, in the said action, pleaded and set out in the said paragraph "7th" of the bill of complaint herein, and to give full force, effect and finality to that certain judgment and decree, and order of sale, of the Superior Court, made as aforesaid in the said action on the 17th day of October, 1904, and hereinbefore pleaded and set forth, and validity to all acts done under and in pursuance of such judgment and decree and order of sale; that in and by its four several judgments, orders and decrees the said Supreme Court of the State of California claimed, assumed and exercised, and it had, jurisdiction of and over each and all of the appeals, questions and matters therein severally presented, decided, adjudged, ordered and decreed, and

particularly jurisdiction to entertain, hear, pass upon, review, and grant the said appeal taken by the said George Staacke, individually, and Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, from the said order, made as aforesaid on the 7th day of June, 1901, denying their said motion for a new trial of the said action, and to remand the said cause to the said Superior Court of the State of California, in and for the County of Santa Barbara, for a new trial of all issues made therein save those expressly excepted as aforesaid, and asserted and upheld the jurisdiction of the said Superior Court to entertain, hear and pass upon the said motion of the said two defendants for a new trial of the said action and thereafter, upon the said remand of the said cause, to re-try all the issues made in the said action save those expressly excepted as aforesaid by the said Supreme Court, and to make, file and enter in the said action the decision and the judgment both dated the 17th day of October, 1904, hereinbefore pleaded and set forth; that the said Superior Court claimed, assumed and exercised, and it had, jurisdiction to re-try the said issues and to make the decision and judgment last hereinabove mentioned; that in passing upon and determining the said several four appeals, the said Supreme Court expressly considered, asserted and upheld its said own jurisdiction and the said jurisdiction of the said Superior Court of the State of California, in and for the County of Santa Barbara, in the several four opinions and decisions of the said Supreme Court, supporting, announcing and directing its said four several judgments, orders and decrees upon such appeals, respectively, appearing respectively, under the caption "Bell v. Staacke", in Volume 137 of the official reports of the said Supreme Court, at pages 307 to 314, both inclusive, in Volume 141 of such reports, at pages 186 to 204, both inclusive, in Volume 148 of such reports, at pages 404 to 407, both inclusive, and in Volume 151 of such reports, at pages 544 to 548, both inclusive, reference to which said opinions, decisions and reports are hereby expressly made in order that the same may be deemed hereby in-

corporated herein as though the same were set out at length in this answer; that the plaintiff in the said action, John S. Bell, and the said claimants under him, submitted to the jurisdiction of the said Supreme Court and the said Superior Court, respectively, upon said several appeals and said re-trial.

V. That on the — day of February, 1906, an order of sale was issued out of the said Superior Court of the State of California, in and for the County of Santa Barbara, upon the said judgment and decree, bearing date the 17th day of October, 1904, hereinbefore pleaded and set forth, to Jesse L. Hurlbut, of the City of Santa Barbara, the Commissioner named and appointed therein to sell the land and premises in the said judgment and decree, and also in the bill of complaint herein, particularly described; that the said Jesse L. Hurlbut qualified as such Commissioner as required by the said judgment and decree and order of sale; that thereafter, on the 5th day of March, 1906, the said Commissioner made and, in pursuance of and in accordance with the said judgment and decree and the said order of sale, after due and legal notice of sale given according to law, sold at public auction, at the place and hour required by law, all the said land and premises to the highest bidder at such sale, to-wit, to the defendant herein, Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, for the aggregate of the sum and amount due and decreed to such administratrix by and under the terms of the said judgment and decree, together with the costs therein awarded to the defendants in the said action, the fees of the said Commissioner, and all the costs and expenses of the said sale, and thereafter on the said day made, executed and delivered to the said administratrix his certificate of the said sale and filed for record a duplicate of such certificate in the office of the County recorder of the said County of Santa Barbara; that after the lapse of one year and on the 8th day of April, 1907, no redemption having theretofore been made of such land or premises, or any part or portion thereof, the said Commissioner, under and in accord-

ance with law, made, executed and delivered to the said administratrix a deed of conveyance of all the said land and premises, and the said administratrix thereupon forthwith filed the same for record in the office of the County Recorder of the said County of Santa Barbara, in Book 117 of Deeds, at page 332, of the records of said county, and immediately entered into possession of all the said land and premises, except the ranch residence, one corral and the garden, and about thirty-five (35) acres of land surrounding the said residence, and ever since has continued in complete, open and peaceable possession of all the said land and premises, save such exceptions; that at the date of such entry by the said administratrix the said ranch residence, corral, garden and surrounding thirty-five (35) acres were in the possession of the said plaintiff in the said action, John S. Bell, and his wife, Kate M. Bell, and they so continued in such possession until the 14th day of January, 1911, at which last named date the said administratrix recovered possession of all the same by means of a writ of assistance issued in her favor out of the said Superior Court of the State of California, in and for the County of Santa Barbara, upon an order of the said Superior Court therefor, made and entered in the said action on the 22nd day of March, 1909; that the said Superior Court claimed, assumed and exercised, and it had, jurisdiction to make the said order; that ever since the said 14th day of January, 1911, the said administratrix has continued in complete, open and peaceable possession of all the said ranch residence, corral, garden and surrounding thirty-five (35) acres; that the effect of the said sale, and of the execution, delivery and recordation as aforesaid of the said duplicate certificate of sale and the said deed, was to establish and vest and they did forthwith establish and vest the title of all the said land and premises in the said estate of Thomas Bell, deceased, free and clear of any claim, lien, right, title, interest or estate whatsoever, of the said plaintiff in the said action, John S. Bell, or of any grantee or successor in interest of the said plaintiff; that the said John S. Bell and Kate M.

Bell, his wife, appealed to the said Supreme Court of the State of California from the order of the said Superior Court granting the aforesaid writ of assistance; that on the 9th day of January, 1911, after hearing of the said last mentioned appeal, the said Supreme Court made and entered its order and judgment affirming the said order granting the said writ; that the said order and judgment of affirmance of the Supreme Court has never been vacated, amended, modified or qualified, and the same has become and is final; that the said Supreme Court had jurisdiction to make the said judgment; that in passing upon and determining the said last mentioned appeal the said Supreme Court again expressly considered, asserted and upheld its said own jurisdiction and the said jurisdiction of the Superior Court of the State of California, in and for the County of Santa Barbara, as aforesaid, in its opinion and decision supporting, announcing and directing its said judgment affirming the said order granting the said writ of assistance, appearing in Volume 159 of the official reports of the said Supreme Court, at pages 193 to 197, both inclusive, reference to which said opinion, decision and report is hereby expressly made in order that the same may be deemed hereby incorporated herein as though the same were set out at length in this answer.

VI. That the deed mentioned in paragraph "9th" of the bill of complaint herein, executed by George Staacke to James L. Crittenden and Catherine M. Bell and delivered on the 8th day of July, 1901, to C. A. Hunt, as County Clerk of the County of Santa Barbara, State of California, was so executed and delivered for the sole purpose of obtaining a stay of execution of the said judgment and decree mentioned and set out in paragraph "7th" of the bill of complaint herein, pending the said respective appeals of the said defendants to the Supreme Court of the State of California, from the said judgment and decree and from the said order denying a motion for a new trial of the action wherein the same had been rendered, and for no other purpose, under and in accordance with law, and particularly in compliance with the

terms and provisions of Section 944 of the Code of Civil Procedure of the State of California, reading as follows:

"If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court."

That on the 28th day of December, 1903, upon the granting as aforesaid by the Supreme Court of a new trial of the said action, and the consequent vacation as aforesaid of the said judgment and decree, the said deed became and ever since has been void and ineffective for any purpose whatsoever.

VII. That the payment of \$179,411.40, made on or about the 16th day of June, 1908, by the said Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, to the defendants herein, Mercantile Trust Company of San Francisco and San Francisco Savings Union, mentioned and described in paragraph "11th" of the bill of complaint herein, was made under and in accordance with the terms of a certain order duly made, filed and entered on the 12th day of June, 1908, by the Superior Court of the State of California, in and for the City and County of San Francisco, in the matter of the estate of the said Thomas Bell, deceased, then pending before the said Superior Court, which said order expressly authorized and directed such payment and was made upon the petition therefor of the said administratrix, filed in the said matter and Court on the 4th day of June, 1908, and upon a hearing thereof, and after notice of such hearing given in accordance with law; that such order has never been appealed from, or vacated or modified, and the same is final; that such payment was made for the sole purpose and with the sole intent of discharging the said property and premises from the lien and burden of that certain judgment and decree, in favor of the said Mercantile Trust Company of San Francisco and San Francisco Savings Un-

ion, pleaded and set forth in paragraph "10th" of the said bill of complaint, and for no other purpose and with no other intent; that such payment did discharge the said property and premises from such lien and burden and satisfied the said judgment and was made under and in accordance with such judgment.

VIII. That the complainant herein, U. S. Oil & Land Company, at all times well knew each and all of the events, occurrences, facts and matters hereinbefore recited, and the effect in law thereof, as and when the same respectively took place, and well knew, before it first acquired or assumed to acquire its alleged interest in the said land and premises, of the said then pending action and of the right, title, interest and estate of the said administratrix, and the said estate of Thomas Bell, deceased, therein and to and in the said land and premises; that these defendants claim and have and own an interest in the said land and premises and in certain portions thereof, as successors in interest by purchase for valuable consideration, of the said estate and of the heirs and devisees of the said Thomas Bell, deceased; that these defendants knew of the matters hereinbefore pleaded at the time they acquired their said interest and relied upon them to assure and secure the title of these defendants to such interest upon such purchase.

IX. That on the 9th day of March, 1910, the complainant, U. S. Oil & Land Company, commenced an action in the said Superior Court of the State of California, in and for the County of Santa Barbara, against the same defendants as the defendants herein, save these defendants, whose interest in the said land and premises was not then a matter of record, by filing a complaint asserting substantially the same cause of complaint as is alleged, and praying for the same relief as is prayed, by it in the bill of complaint herein; that certain of the defendants in the said action, to-wit, the defendants herein Teresa Bell, as administratrix with the will annexed of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as executor of the will of George Staacke, deceased, Ro-

bina Vellguth, Clarence Vellguth, Rauer's Law and Collection Agency, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Arthur S. Holman, and Teresa Bell, served and filed their answer therein on the 9th day of April, 1910, setting up all the matters and things previously occurring or existing hereinbefore in this plea set forth and pleaded and caused the said action to be set for trial by the said Superior Court on a day certain, to-wit, on the 6th day of July, 1910; that on the said day, a few minutes before the said action was called by the said Superior Court for trial, the said plaintiff therein, U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards & Carrier, without the consent or knowledge of the said defendants and their attorneys, filed and procured to be entered in the office of the Clerk of the said Superior Court a dismissal of the said action; that the said action so commenced, set for trial and dismissed was numbered 7480 of civil actions in said Superior Court.

X. That on the 4th day of March, 1911, the complainant, U. S. Land & Oil Company, commenced another action in the said Superior Court of the State of California, in and for the County of Santa Barbara, against the same defendants as the defendants herein, save these defendants, whose interest in the said land and premises was not then a matter of record, by filing a complaint asserting substantially the same cause of complaint as is alleged, and praying for the same relief as is prayed, by it in the bill of complaint herein; that certain of the defendants in the said action, to-wit, the defendants herein Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as executor of the will of George Staacke, deceased, Robina Vellguth, Clarene Vellguth, Rauer's Law and Collection Agency, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company of San Francisco, San Francisco

Savings Union, Arthur S. Holman, and Teresa Bell, served and filed their answer therein on the 29th day of July, 1911, setting up all the matters and things previously occurring or existing hereinbefore in this answer set forth and pleaded and caused the said action to be set for trial by the said Superior Court on a day certain, to-wit, on the 17th day of October, 1911; that on the said day, a few minutes before the said action was called by the said Superior Court for trial, the said plaintiff therein, U. S. Oil & Land Company, by its attorneys James L. Crittenden and Richards & Carrier, without the consent or knowledge of the said defendants and their attorneys, filed and procured to be entered in the office of the Clerk of the said Superior Court a dismissal of the said action; that the said action so commenced, set for trial and dismissed was numbered 7787 of civil actions in said Superior Court.

XI. That the complainant is concluded and prevented, by the matters aforesaid, and particularly by the several decisions, judgments, orders and decrees of Court hereinabove mentioned and referred to, from raising all or any of the matters set forth in its said bill of complaint.

XII. In so far as may be necessary, in order to constitute the foregoing a good and valid defense to the said bill of complaint, these defendants incorporate herein the explicit denials, of the fraud and combination charged in the said bill, of the facts on which the said charge is founded, and of the evidentiary and other matter in the said bill of complaint anticipatory of the said defense, hereinafter in their second defense to the said bill of complaint contained.

As a second and further and alternative defense to the whole of the said bill of complaint these defendants say:

I. Admit that the Territory of Arizona on or about the 12th day of February, 1912, was admitted as and became a State and one of the United States of America, and ever since has been and now is a State and one of the United States of America.

II. As to the allegations, in paragraph "1st" of the said bill of complaint, as follows: that the complainant, U. S. Oil & Land Company, was formed, organized and existed under and by the laws of the Territory of Arizona; that it was and is provided and declared in and by the Constitution of the State of Arizona that all laws of the Territory of Arizona in force at the time of the adoption of said Constitution should remain in force as laws of the State of Arizona until they expired by their own limitations or were altered or repealed by law, and also that no rights or contracts existing at the time of admission of said State of Arizona into the Union should be affected by a change in the form of government from territorial to state; that by and under the provisions of said Constitution the complainant became and is a corporation existing under the Constitution and laws of the State of Arizona; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

III. Deny that the complainant is the owner in fee simple absolute, or any owner, of an undivided one-half of, or of any interest in, all or any portion of that certain tract of land, situate in the County of Santa Barbara, State of California, consisting of 10,067.2 acres, particularly described in paragraph "1st" of the said bill of complaint.

IV. As to the allegations, in paragraphs "2d," "3d" and "4th" of the said bill of complaint, as follows: That the defendant San Francisco Savings Union is and during all the times mentioned in the said bill of complaint was a corporation created, organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City and County of San Francisco, in said State of California; that the defendant Mercantile Trust Company of San Francisco is and during all the times in the said bill of complaint mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California and having its principal place of business in the City and County of San Francisco, in

said State of California; that on the 16th day of October, 1892, said Thomas Bell died intestate in the City and County of San Francisco, State of California, a resident of said city and county, leaving property therein, both real and personal; that the last will and testament of said Thomas Bell was by an order of the Superior Court of the City and County of San Francisco, State of California, duly made and given on the 7th day of November, 1892, admitted to probate; that on the 7th day of November, 1892, by an order of Court duly given and duly made, George Staacke and John W. C. Maxwell and one Henry Pichoir, the executors named in said will, were duly appointed the executors of the last will and testament of said Thomas Bell, deceased, and each of them on the 7th day of November, 1892, duly qualified and entered on the discharge of their duties as such executors; that thereafter, on the 30th day of December, 1892, said Henry Pichoir renounced his trust as such executor, and his resignation as such executor was on that day duly accepted by the Court and he was discharged from his duties as such executor; that thereafter and on the 13th day of September, 1898, the resignation of John W. C. Maxwell, as such executor, was by order of said Court in the matter of said estate accepted and said Maxwell ceased to be executor of said estate; that thereafter and on the 4th day of May, 1900, an order was duly made and entered in said Superior Court in the matter of said estate of Thomas Bell, deceased, revoking the letters testamentary that had been issued to said George Staacke, and said George Staacke ceased to be executor of the estate of said Thomas Bell, deceased; that thereafter and on the 2d day of February, 1902, said Teresa Bell filed a petition in the matter of the estate of Thomas Bell, deceased, praying that letters of administration of the estate of Thomas Bell, deceased, with the will annexed, be granted and issued to her, and that such proceedings were had and taken in the matter of said estate that an order was duly made therein by said Superior Court of the City and County of San Francisco on the 13th day of February, 1902, appoint-

ing said Teresa Bell administratrix of the estate of Thomas Bell, deceased, with the will annexed, and said order was duly filed and entered on the 19th day of February, 1902, and letters of administration of the estate of Thomas Bell, deceased, with the will annexed, were duly issued to said Teresa Bell; that said Teresa Bell on said 19th day of February, 1902, duly qualified as administratrix of the estate of Thomas Bell, deceased, with the will annexed, and has ever since been the administratrix of the estate of Thomas Bell, deceased, with the will annexed; that the defendant Rauer's Law and Collection Company is and during all the times in the said bill of complaint mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

V. Admit and allege that the defendant Teresa Bell is the administratrix of the said estate of Thomas Bell, deceased, pending in the Superior Court of the State of California, in and for the City and County of San Francisco.

VI. Deny that the defendants in the said bill of complaint named and mentioned, claim and assert, or claim or assert, and each of them claims and asserts, or claims or asserts, an estate or interest in said tract, piece or parcel of land and in every part thereof.

Admit and allege that these defendants claim and assert and have a right, title, interest and estate in certain portions of the said tract, as follows, the same having been acquired, at the times and from the persons hereinafter mentioned, by purchase and for good and valuable consideration:

The defendant W. P. Hammon claims, and owns and has, ownership in fee simple to certain one hundred (100) acres of the said tract of land, with certain rights of way over the said tract of land, ever since the 10th day of November, 1911, by reason of having purchased the same from the defendant F. C. van Deinse, and having taken from the said F. C. van Deinse and Lulu van

Deinse, his wife, their grant, bargain and sale deed thereto, dated the said 10th day of November, 1911, and thereafter duly acknowledged and recorded on the 5th day of August, 1912, in the office of the County Recorder of the County of Santa Barbara, State of California, in Book 135 of Deeds, at page 389; the defendant F. C. van Deinse prior to such sale and deed by him to the defendant W. P. Hammon claimed, and owned and had, ownership in fee simple to the said one hundred (100) acres of land and the said rights of way, ever since the 22nd day of May, 1911, by reason of having purchased the same from the estate of the said Thomas Bell, deceased, and of having taken from Teresa Bell, as administratrix with the will annexed of the said estate, her deed thereto, dated the said 22nd day of May, 1911, and thereafter duly acknowledged, and recorded on the 18th day of September, 1911, in the office of the said County Recorder of the County of Santa Barbara, in Book 132 of Deeds at page 407, such sale by the said administratrix having been authorized and confirmed, and the execution and delivery of such deed directed, by the Superior Court of the State of California, in and for the City and County of San Francisco, by its order duly given and made, and filed and entered, in the matter of the said estate of Thomas Bell, deceased, on the said 22nd day of May, 1911, a certified copy of which order was recorded on the 4th day of August, 1911, in the office of the said County Recorder of the County of Santa Barbara, in Book 130 of Deeds at page 564; each the said two separate deeds and the said order describes particularly the said one hundred (100) acres of land and the said rights of way, and reference is hereby made to such deeds and order, and to the said records thereof, for such descriptions.

The defendant W. P. Hammon claims, and owns and has, ownership in fee simple to certain two thousand (2,000) other acres of the said tract of land, with a certain right of way over the said tract of land, ever since the 13th day of March, 1913, by reason of having purchased the same from Oilfields Syndicate of San Fran-

cisco, a corporation, and of having taken from the said corporation its deed of grant, bargain and sale thereto, dated and acknowledged the said 13th day of March, 1913, and thereafter on the 14th day of March, 1913, recorded in the office of the said County Recorder of the County of Santa Barbara; the said Oilfields Syndicate, prior to such sale and deed by it to the defendant W. P. Hammon, and its predecessors in interest, including the defendant W. P. Hammon, claimed and owned and had, ownership in fee simple to the said two thousand (2,000) acres of land and the said right of way by reason of several sales thereof evidenced by the conveyances thereof as follows: (1) Deed of grant, bargain and sale of Teresa Bell, Reginald Bell, William E. Bell, Robina Vellguth, Muriel M. Bell, Elizabeth M. Bell, A. S. Holman, and Peter J. Crosby to the defendant W. P. Hammon, dated and acknowledged the 1st day of May, 1911, and recorded on the 3rd day of June, 1912, in the office of the said County Recorder of the County of Santa Barbara in Book 136 of Deeds at page 279; (2) deed of grant, bargain and sale of the defendant W. P. Hammon to S. L. Dahl, dated and acknowledged the 22nd day of May, 1912, and recorded on the 14th day of June, 1912, in the office of the said County Recorder of the County of Santa Barbara in Book 136 of Deeds at page 335; (3) deed of grant, bargain and sale of the said A. L. Dahl and Lenna T. Dahl, his wife, dated and acknowledged the 12th day of June, 1912, and recorded on the 14th day of June, 1912, in the office of the said County Recorder of the County of Santa Barbara in Book 136 of Deeds at page 336; and further by reason of that certain decree of partial distribution thereof duly given and made, and filed and entered, in the matter of the said estate of Thomas Bell, deceased, by the Superior Court of the State of California, in and for the City and County of San Francisco, on the 23rd day of July, 1912, a certified copy whereof was recorded on the 24th day of July, 1912, in the office of the said County Recorder of the County of Santa Barbara in Book 137 of Deeds, at page 39; each the said three several deeds and

the said decree describes particularly the said two thousand (2,000) acres of land and the said right of way, and reference is hereby made to such deeds and decree, and to the said records thereof, for such descriptions.

Admit and allege that the said claim, estate, interest and ownership of the defendant W. P. Hammon, and of his said predecessors in interest to the said two several portions, of one hundred (100) acres and two thousand (2,000) acres, respectively, of the said tract of land, are and were adverse to the complainant.

Admit and allege that those others of the defendants who are heirs and devisees of the said Thomas Bell, deceased, or assigns or successors in interest of such heirs and devisees, claim and assert and have a right, title, interest and estate in a portion of the said tract, to-wit, all rights, titles, interests and estates thereof and therein, and all parts thereof, not claimed and owned as aforesaid by these defendants as hereinabove stated, and also a right by way of mortgage over the said two thousand (2,000) acres thereof claimed and owned by the defendant W. P. Hammon, under a certain indenture of mortgage executed to the said Teresa Bell, as administratrix of the said estate of Thomas Bell, deceased, by the said A. L. Dahl, and dated the 31st day of May, 1912; admit and allege that each and all such claim, estate, interest, right and ownership is adverse to the complainant.

Deny that any of the other defendants claims and asserts, or claims or asserts, an estate or interest in the said tract, adverse to the complainant or otherwise; deny that the said claims of these defendants and of the said other defendants claiming by or through the said Thomas Bell, deceased, are, or that any of the said claims is, wrongful and unlawful, or wrongful or unlawful, and without or without any right whatever, and that, or that, the said defendants have not, and each or each of them has not any right, title, estate or interest whatsoever in or to the undivided one-half of said tract of land of which complainant claims to be the owner, or in or to any part or portion thereof; deny that the com-

plainant is the owner of an undivided one-half of the said tract, or of any part, portion or interest thereof or therein.

Allege that the respective interests of these defendants and of the said other defendants claiming by or through the said Thomas Bell, deceased, in the said tract of land and the several portions thereof, are as aforesaid and constitute and aggregate the entire right, title, ownership and estate of the said tract of land.

VII. As to the allegations in paragraph "6th" of the said bill of complaint, as follows: That the true name of said Robina Bell is Robina Vellguth; the true name of said R. McColgan is Reginald McColgan, and the true name of said Rauer Law and Collection Company is Rauer's Law and Collection Company; that the complainant has designated said defendants by both names, as it has no personal knowledge as to their true or full names; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

VIII. Admit that on or about the 29th day of June, 1901, a judgment and decree was made and recorded in and by the Superior Court of the State of California, in and for the County of Santa Barbara, and Hon. W. S. Day, Judge thereof, and was filed therein on said 29th day of June, 1901, in said Superior Court by C. A. Hunt, County Clerk of said County of Santa Barbara and Clerk of said Superior Court, in an action then pending in said Superior Court entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased, and Louis Jones, defendants," and in which action Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, at her request as such administratrix had been substituted by order of said Superior Court made in said action as defendant in place of defendants George Staacke and John W. C. Maxwell, as executors of the will of Thomas Bell, deceased; admit that the said judgment and decree was thereafter duly entered on or about the 9th day of July, 1901, by the Clerk of the said Su-

perior Court in the records and judgment book of the said Superior Court; admit that the said judgment and decree was entitled in said action and was substantially in the words and figures as set forth in paragraph "7th" of the said bill of complaint.

Deny that the said judgment and decree or judgment or decree was duly or otherwise than improperly made and recorded or made or recorded.

Admit that on or about the 8th day of July, 1901, the said George Staacke individually and said Teresa Bell, as special administratrix of the estate of Thomas Bell, deceased, served and filed a notice of appeal to the Supreme Court of the State of California from the portion or portions of the said decree described and mentioned in paragraph "8th" of the said bill of complaint; admits that thereafter such proceedings were duly had and taken on said appeal from said decree to the Supreme Court that said appeal from said judgment and decree was dismissed by the said Supreme Court of the State of California.

Deny that the said appeal was so dismissed for want of jurisdiction; deny that the said judgment and decree thereby or ever became and was or became or was affirmed; deny that the said judgment and decree ever or at any time since has been and remained or has been or remained and still is or still or at all is in full force or any force at all; deny that said judgment and decree was and is or was or is a final or any adjudication of the rights and interests or any right or any interest of the parties, or any of the parties, to said action in which it was rendered and entered.

Admit that the said Superior Court and the Judge thereof, in said action in which said judgment and decree was rendered, rendered and filed findings of fact and conclusions of law therein on the 6th day of March, 1901, and thereafter rendered and filed additional findings of fact and conclusions of law on the 7th day of June, 1901, on material issues raised by the pleadings in said action; that no motion for a new trial in said action of John S. Bell v. George Staacke, et al., and no

notice of intention to move for a new trial therein was made, given, served or filed on or after the 7th day of June, 1901, and the time to serve and file any notice of intention to move for a new trial therein expired on or about the 17th day of June, 1901.

Deny that the findings of fact and conclusions of law, or any of such findings or conclusions, and the decision, or the decision, of the said Superior Court in said action on the 9th day of July, 1901, or at any time, became and ever or ever since or at any time have or has been final, conclusive and binding or final, conclusive or binding upon all or any of the parties to the said action, and their or their or any of their successors in interest, and upon or upon each and all or each or all or any of the heirs of said Thomas Bell, deceased, and the or the jurisdiction and power or power of said Superior Court to hear or grant any motion for a new trial in said action was then or at all terminated forever or at all and ceased or ceased to exist, and the said or the said Superior Court and any and all or any or all appellate courts of the State of California and the or the Supreme Court of the State of California lost and ceased to have or lost or ceased to have any jurisdiction whatsoever or at all to entertain, hear, pass upon and review or review any notice of intention to move for a new trial in said action or any order made on any such notice or motion, or to modify, alter or change in any way or manner or respect said judgment of said Superior Court.

Admits that the facts as to the statutes of the State of California relating to motions for new trials, as set forth in paragraph "8th" of the said bill of complaint, are substantially correct; admit that said action in which said judgment and decree dated the 29th day of June, 1901, was rendered and filed was tried without a jury by the said Superior Court.

IX. As to the allegations, in paragraph "8th" of the said bill of complaint, as follows: That each and all of the defendants and attorneys for the defendants in said action in which said judgment and decree of June 29, 1901, was rendered and filed had notice and well

knew on and before the ninth day of July, 1901, that said findings and said additional findings and conclusions of law and said judgment and decree had been rendered and filed at the time and as in the said paragraph and bill of complaint alleged and shown; that said additional findings and conclusions of law were made, rendered and filed by said Superior Court and by the Judge of said Superior Court upon and at the special instance and request of the attorneys of and for the defendants in said action in which said decree and judgment, dated June 29th, 1901, was rendered and filed; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

X. Admit that the facts as to Section 955 of the Code of Civil Procedure of the State of California, as set forth in paragraph "8th" of the said bill of complaint, are substantially correct; admit that the Supreme Court of California did not in or by its order, judgment and decree dismissing the appeal from said judgment and decree of said Superior Court, dated and filed in said Superior Court on the 29th day of June, 1901, dismiss said appeal without prejudice to another appeal or to any other appeal and did not either expressly or otherwise provide or declare that the dismissal of said appeal was made expressly or otherwise without prejudice to another appeal or to any other appeal; that said appeal taken by the defendants from said judgment and decree, dated June 29th, 1901, was dismissed by an order and judgment of the Supreme Court of the State of California, duly made and rendered in bank on the 16th day of September, 1902, and that said order and judgment dismissing said appeal from said judgment has never been modified, vacated or set aside; that the said findings of fact and conclusions of law made, rendered and filed in and by said Superior Court as aforesaid on the 6th day of March, 1901, and on the 7th day of June, 1901, were and constituted the decision of said Superior Court in said action entitled "John S. Bell, plaintiff, vs. George Staacke and John W. C. Maxwell, as executors

of the will of Thomas Bell, deceased, and Louis Jones, defendants," upon which said judgment and decree of said Superior Court was made and filed on the 29th day of June, 1901, as aforesaid; that said findings of fact and conclusions of law and additional findings of fact and conclusions of law are substantially in the words and figures as set forth in paragraph "8th" of the said bill of complaint.

XI. Deny that the said decision was the only decision of the said Superior Court of the State of California, in and for the County of Santa Barbara, in the said action.

And in this behalf, and as more fully explaining and showing the course and eventual disposition made by the said Superior Court and by the Supreme Court of the State of California of the said action, and of the said judgment and decree therein upon which the complainant herein relies, these defendants hereby expressly refer to paragraphs I, II, III, IV and V of the first defense hereinbefore set forth in this answer, and pray that all the matters therein pleaded may be deemed hereby incorporatd herein as fully and wholly as though the same were herein set out and repeated at length.

XII. As to the allegations in paragraph "9th" of the said bill of complaint, as follows: That said Thomas Frederick Bell, Mary T. Holman, Robina Vellguth, Eustace Reginald Bell, Muriel Bell, and Teresa Bell were and are the only heirs at law of Thomas Bell, deceased; that said George Staacke made, signed, acknowledged and executed to James L. Crittenden and Catherine M. Bell and delivered on the 8th day of July, 1901, to C. A. Hunt, as County Clerk of the said County of Santa Barbara, and as Clerk of said Superior Court, a good and sufficient deed and conveyance in due form of law, wherein and whereby he, the said George Staacke, granted, conveyed and transferred to the said James L. Crittenden in fee simple an undivided one-half of all of said tract, piece and parcel of land containing 10,067.2 acres, and to said Catherine M. Bell in fee simple an undivided one-half of, in and to said tract, piece or parcel

of land of 10,067.2 acres, describing in said deed and conveyance said tract, piece and parcel of land of 10,067.2 acres; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

XIII. Deny that such deed was made, signed, acknowledged and executed, and delivered, or made, signed, acknowledged, executed or delivered by George Staacke acting under and in accordance or in accordance with said judgment and decree and order therein made and contained or under or with any of the said judgment, decree or order; deny that the transfer, grant and conveyance made by and contained in said deed delivered to said C. A. Hunt as County Clerk and Clerk of said Superior Court, was delivered to said C. A. Hunt as such Clerk or at all for, and for the benefit of, or for, or for the benefit of, James L. Crittenden and Catherine M. Bell, or either of them, and became and was or became or was an absolute or any grant or other deed, transfer and conveyance or deed, transfer or conveyance of the title and fee, or any title or any fee of, in and to, or of, in or to said tract, piece or parcel, or tract, piece or parcel, of land of 10,067.2 acres, or any part thereof, to said James L. Crittenden and Catherine M. Bell, or either of them, and vested or vested in each or either of them an undivided or any one-half of said or any lands and of each and every or of each or every or of any part and portion or part or portion thereof; deny that the said grant, transfer and conveyance or grant, transfer or conveyance became final or of any effect on or about the 29th day of December, 1901, or at any time.

Allege that the said deed was made, signed, acknowledged, executed and delivered under and in accordance with the provisions of Section 944 of the Code of Civil Procedure of the State of California, and not otherwise; allege that the said deed at no time had any effect as a grant, conveyance or transfer, and at all times prior to the 30th day of November, 1903, was in the hands of the said clerk, under the said Section 944, to abide the

judgment of the Supreme Court of the State of California; that on the said 30th day of November, 1903, and again on the 28th day of December, 1903, the said Supreme Court by its two several judgments duly given and made on the said respective days, annulled and cancelled the said deed; that since the said 28th day of December, 1903, the said deed has had no force or validity for any purpose whatsoever.

And in this behalf, and as more fully explaining and showing for what reason and under what circumstances and with effect the said deed, upon which the complainant herein relies, was made, signed, acknowledged, executed and delivered, and how and when it was annulled and cancelled by the said Supreme Court, these defendants hereby expressly refer to paragraph VI of the first defense hereinbefore set forth in this answer, and pray that all the matters therein pleaded may be deemed hereby incorporated herein as fully and wholly as though the same were herein set out and repeated at length.

XIV. As to the allegations in paragraph "9th" of the said bill of complaint, that the said U. S. Oil & Land Company was duly created, and organized under and by virtue of the laws of the Territory of Arizona and having its principal place of business outside of said Territory of Arizona and in said City and County of San Francisco, and was such corporation on the 18th day of September, 1902, and for a long time prior thereto, and has ever since been a corporation, and is now a corporation existing by and under the Constitution and laws of the State of Arizona; that on or about the 5th day of April, 1905, said George Staacke died testate in the City and County of San Francisco, State of California, a resident of said City and County, leaving property therein; that thereafter the last will and testament of said George Staacke was filed for probate in the Superior Court of the City and County of San Francisco, State of California; that thereafter in the month of April, 1907, a petition in writing was filed by George Henry Howard for the probate of the last will and testament of said George Staacke, deceased, in the said

Superior Court of the City and County of San Francisco, and on the 19th day of April, 1907, an order and decree was duly given and made in said last mentioned Superior Court admitting the last will and testament of said George Staacke to probate, and appointing said George Henry Howard executor of the estate and of the last will and testament of said George Staacke, deceased; that on the said 19th day of April, 1907, letters testamentary of and upon the estate and of the last will and testament of said George Staacke, deceased, were duly issued out of and by said Superior Court of the City and County of San Francisco to said George Henry Howard, and a duplicate filed in the office of the Clerk of said Court, and that said George Henry Howard thereupon duly qualified and entered upon the discharge of his duties as such executor and has ever since been and now is the executor of the estate and of the last will and testament of said George Staacke, deceased; that on the 18th day of September, 1902, said James L. Crittenden and Nina D. Crittenden, his wife, for a valuable consideration sold, granted, transferred and conveyed in fee simple to the U. S. Oil & Land Company, plaintiffs herein, by deed dated September 18, 1902, signed and acknowledged by them, an undivided one-half of, in and to the said tract, piece and parcel of land of 10,067.2 acres; and that said deed was thereafter and on the 26th day of September, 1902, duly recorded in the office of the County Recorder of said County of Santa Barbara in Book 84 of Deeds, at page 253 et sequiter; that on the 5th day of July, 1910, said U. S. Oil & Land Company for a valuable consideration sold, granted, transferred and conveyed in fee simple an undivided one-half of said 10,067.2 acres and tract of land to the San Luis Land and Investment Company, a corporation, by deed dated the 5th day of July, 1910, duly signed and acknowledged by it and its President and Secretary and that said deed was thereafter and on the 5th day of July, 1910, duly recorded in the office of the County Recorder of said County of Santa Barbara in Book 128 of Deeds, at page 101 et sequiter; these de-

endants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Deny that such deeds were, or either of them was, good and sufficient or good or sufficient, or operated as a sale, grant, transfer or conveyance, in fee simple or otherwise or at all, of any interest in the said tract or any portion thereof.

XV. As to the allegations in paragraph "10" of the said bill of complaint, as follows: that on the 23rd day of August, 1898, an action was commenced in the Superior Court of the State of California, in and for the County of Santa Barbara, by the filing of a complaint and that said action was entitled "Kate M. Bell, James L. Crittenden and Sydney M. Van Wyck, Jr., Plaintiffs, v. San Francisco Savings Union, Thaddeus B. Kent, George Staacke, Henry C. Campbell, Edward B. Pond, Teresa Bell, Thomas Frederick Bell, Maria Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, Teresa Bell as guardian of the persons and estates of said Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, and John W. C. Maxwell and George Staacke as executors of the estate and of the last will and testament of Thomas Bell, deceased, John Doe, Richard Roe, Jane Doe and Mary Doe, defendants"; that said action was numbered in said Superior Court of Santa Barbara County as No. 4424, and that thereafter by an order duly made and filed on the 6th day of October, 1903, and by summons issued on defendant's cross-complaint said U. S. Oil & Land Company was brought in as a defendant to the cross-complaint in said action; that on the 17th day of December, 1902, an order in said action No. 4424 was duly made and filed in said Superior Court wherein and whereby said Mercantile Trust Company of San Francisco was made a party defendant and it and said San Francisco Savings Union, Henry C. Campbell and Edward B. Pond were given permission to serve and file a supplemental complaint and also a cross-complaint; that on or about the 12th day of October, 1903, a cross-com-

plaint on the part of and by said San Francisco Savings Union, Henry C. Campbell, Edward B. Pond, Thaddeus B. Kent, George Staacke and Mercantile Trust Company of San Francisco against said Kate M. Bell, James L. Crittenden, Teresa Bell as the administratrix of the estate of Thomas Bell, deceased, with the will annexed, and the U. S. Oil & Land Company, as defendants to said cross-complaint, was made and filed in said action; that answers to said amended cross-complaint were duly made, served and filed by each and all of said defendants to said cross-complaint in said action No. 4424; that answers to the complaint as amended in said action No. 4424 were duly made, served and filed by said San Francisco Savings Union, Edward B. Pond, Henry C. Campbell, Mercantile Trust Company of San Francisco, George Staacke and Teresa Bell as administratrix with the will annexed of the estate of Thomas Bell, deceased; that thereafter a trial of the issues raised in and by the pleadings in said action No. 4424 was had; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Admit that a decision consisting of findings of fact and conclusions of law was made, rendered and filed in said Superior Court, in an action then pending therein, numbered 4424, by the Judge thereof on or about the 14th day of March, 1905, and on or about the same day a judgment and decree was duly made and filed in said action No. 4424, in said Superior Court by the Judge thereof; that said decision consisting of findings of fact and conclusions of law in said action No. 4424 found and filed as aforesaid is substantially in the words and figures as set forth in paragraph "10th" of the said bill of complaint; admit that the judgment and decree in the said action, made and filed as aforesaid on or about the 14th day of March, 1905, was thereafter duly entered in said Superior Court, and is substantially in the words and figures as set forth in paragraph "10th" of the said bill of complaint; admit that on or about the 8th day of September, 1905, the said U. S. Oil & Land Company

and James L. Crittenden, by notice of appeal and by giving the undertaking required by law, duly appealed from the judgment in said action No. 4424 to the Supreme Court of the State of California; that thereafter and on or about the 10th day of April, 1906, said U. S. Oil & Land Company and said James L. Crittenden by written notice of appeal and by giving the undertaking required by law duly took and perfected an appeal to the said Supreme Court from an order made in said action denying their motion for a new trial; that the said Teresa Bell, as such administratrix also took and perfected an appeal from a portion of said judgment in said action to said Supreme Court, to-wit, from all thereof save that portion of the said judgment which adjudged that the plaintiffs therein, Kate M. Bell and James L. Crittenden, and the defendant to the cross-complaint therein, U. S. Oil & Land Company, jointly and severally take nothing by the said action.

Admit and allege that such proceedings were thereafter duly had on said appeals that said judgment and order denying a new trial in said action No. 4424 were duly affirmed on the 14th day of February, 1908, and that said decree so affirmed has ever since been and now is in full force.

Deny that the said Teresa Bell, as such administratrix, appealed from that portion of the said judgment which adjudged that the plaintiffs therein, Kate M. Bell and James L. Crittenden, and the defendant to the cross-complaint therein, U. S. Oil & Land Company jointly and severally take nothing by the said action.

And in this behalf, and as more fully explaining and showing the nature of the said action and of the said appeals, and the relation of the said action to the other actions and proceedings in the said bill of complaint and in this answer mentioned or pleaded, these defendants allege that the opinion and decision of the said Supreme Court, supporting, announcing and directing the judgment and decree affirming the said judgment and order made in the said action and so appealed from, appears, under the caption "Bell v. San Francisco Savings

Union," in Volume 153 of the official reports of the said Supreme Court, at pages 64 to 77, both inclusive, reference to which said opinion, decision and report is hereby expressly made in order that the same may be deemed hereby incorporated herein as though the same were set out at length in this answer.

XVI. Admit that the value of the said tract, piece and parcel of land, consisting of 10,067.2 acres, has greatly increased, since the year 1893, by reason of the discovery of oil therein and in the adjoining lands.

Deny that the said 10,067.2 acres of land is now of the value of at least three million dollars (\$3,000,000).

XVII. Admit that the said Teresa Bell, as administratrix with the will annexed of the estate of Thomas Bell, deceased, has paid to the Mercantile Trust Company of San Francisco, and to said San Francisco Savings Union \$179,411.40, the full amount due said San Francisco Savings Union on its claim against said estate of Thomas Bell, deceased, as adjudged and decreed in and by said judgment in the said action No. 4424; that on the 16th day of June, 1908, the said Teresa Bell, as such administratrix, by her attorney, T. Z. Blake-man, Esq., and said San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent and Mercantile Trust Company of San Francisco by their attorneys, Canfield & Starbuck, Esq., made and filed in said Superior Court in said action No. 4424 a written stipulation stating and declaring that the total amount due to said San Francisco Savings Union was \$179,411.40 and that said amount had been paid to the said San Francisco Savings Union by the said Teresa Bell as such administratrix, without any sale of the lands in said judgment described, and that it was therefore stipulated that the said judgment in said action No. 4424 be and was satisfied, and that the Clerk of the said Superior Court was directed to enter satisfaction of said judgment.

Deny that the said payment was voluntarily made; deny that the said payment was made with the intent, object and design, or intent, object or design, of depriving the complainant of its or any right and interest.

or right or interest, of, in and to, or of, in or to said undivided one-half of 10,067.2 acres of land, or any part thereof, and of, or of, its or any right, interest and equity, or right, interest or equity, in and to, or in or to, such or any portion of the proceeds or any proceeds of the sale of the said 10,067.2 acres of land as should or would remain after the sale of said lands by said Mercantile Trust Company of San Francisco, under and in accordance with said judgment and decree in said Action No. 4424; deny that the complainant had any right, interest or equity in all or any portion of the said tract or the said proceeds of sale; deny that with such intent, purpose, object and design, or such intent, purpose, object or design, and to obtain, or to obtain, an unfair and unconscionable, or unfair or unconscionable or any advantage, over the said complainant the said Teresa Bell upon making said payment, or otherwise or at all, obtained from said Mercantile Trust Company of San Francisco and from said San Francisco Savings Union, or from either of them, an instrument in writing purporting and pretending, or purporting or pretending, to grant, bargain, sell and convey, or to grant, bargain, sell or convey, said 10,067.2 acres of land with the exception of those pieces and parcels excepted therefrom by and in said judgment to said Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, or any portion of the said tract and acres of land.

Allege that at the time of such payment by the said Teresa Bell, as such administratrix, the heirs and devisees of the said Thomas Bell, deceased, and the estate of the said deceased, were the owners of the said tract of 10,067.2 acrs, and that the said payment was made for the sole purpose and with the sole intent of discharging the said tract of land from the burden and lien of the said judgment in the said action No. 4424, and that the said payment was of the sum due upon said judgment, to-wit, the sum of \$179,411.40, and when made did effect such discharge; that such payment was made

under the authorization and order of the Court having jurisdiction over the said estate, to-wit, the Superior Court of the State of California, in and for the City and County of San Francisco, as pleaded and set forth in paragraph VII of the first defense hereinbefore set forth in this answer, reference to which paragraph is hereby expressly made, with the prayer that all the matters therein pleaded may be deemed hereby incorporated herein as fully and wholly as though the same were herein set out and repeated at length.

Admit and allege that upon such payment the said San Francisco Savings Union made, executed and delivered to said Teresa Bell, as such administratrix, a deed of reconveyance of all the land embraced in the mortgage foreclosed in the said tract of 10,067.2 acres.

Deny that the making and execution or the making or execution of the said conveyance or instrument was contrary to and in violation, or in violation, of said judgment in said action No. 4424, or of the or any provisions of said judgment, or of the trust, if any, therein adjudged and declared or adjudged or declared, and was or was wrongful, fraudulent and unlawful, or wrongful, fraudulent or unlawful, and in violation, or in violation, of the rights and interests or any right or any interest of the complainant herein under said judgment and decree in said action No. 4424 and under or under said judgment dated June 29th, 1901, or otherwise, or at all; deny that complainant had any right or interest under said judgment and decree in said action No. 4424 or under said alleged judgment dated June 29th, 1901.

XVIII. As to the allegations in paragraph "11th" of the said bill of complaint, as follows: That said deed and conveyance so obtained as aforesaid by said Teresa Bell as such administratrix from said Mercantile Trust Company of San Francisco and said San Francisco Savings Union was dated May 26th, 1908, and was recorded at the request of said Teresa Bell as such administratrix on the 15th day of June, 1908, by the County Recorder of Santa Barbara County in Book of Deeds

No. 118 on the pages 585 to 589 thereof; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Admit that one of the considerations, and allege that the only consideration, for the making and execution of said deed and conveyance to said Teresa Bell as such administratrix, as stated in said deed, was the payment of the sum due and payable to said San Francisco Savings Union under and by virtue of said judgment in said action No. 4424.

Deny that such payment and conveyance was a pretended or any sale or transfer, or anything but a reconveyance as hereinbefore stated; deny that the same was made under and in pursuance or under or in pursuance of a combination and conspiracy, or a combination or conspiracy, entered into by the said Mercantile Trust Company of San Francisco, San Francisco Savings Union and Teresa Bell, or any of them, or any combination or conspiracy whatsoever, with the wrongful, unlawful and fraudulent, or wrongful, unlawful or fraudulent or any intent, object, purpose and design, or intent, object, purpose or design, to defraud the said complainant out of its right, title and interest, or any right, title or interest, in said 10,067.2 acres of land, or any part thereof, and out, or out, of its right, title and interest, or any right, title or interest, in and to or in or to the or any proceeds of a sale of said land remaining after the payment of the sums of money ordered by said decree to be paid, or otherwise or at all, and also, or to evade and defeat, or evade or defeat, the provisions of said judgment and decree in said action No. 4424 requiring said land to be sold at public auction upon and after publication of notice of any proposed sale in certain newspapers, or any provisions of said judgment and decree, and that, or that, said payment and reconveyance was made secretly or at all in pursuance and execution, or in pursuance or execution, of any combination and conspiracy, or combination or conspiracy, and with or with the fraudulent or any intents, objects, purposes and

designs specified in paragraph "11th" of the said bill of complaint.

As to the allegations in paragraph "12th" of the said bill of complaint, as follows: That the said payment and reconveyance was made without any notice whatever thereof, or of any proposed sale being given or published in any newspaper and without any notice whatever being given to said complainant; that the said Teresa Bell, Mercantile Trust Company and San Francisco Savings Union knew and each of them knew at the time of the said pretended sale and transfer, and of the payment of said sum of \$179,411.40 that said tract of land of 10,067.2 acres was worth and of the value of at least \$500,000 and that the development of oil near or adjoining said lands made them prospectively worth at least one million of dollars or more; that said 10,067.2 acres of land has never been advertised for sale by said Mercantile Trust Company of San Francisco as required in and by said decree in said action No. 4424 or otherwise or at all; that said pretended deed and conveyance and the pretended sale and transfer of said tract of 10,067.2 acres of land to said Teresa Bell as administratrix, etc., by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union has never been reported or submitted to or approved or confirmed by said Superior Court of Santa Barbara County; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Deny that said payment and reconveyance was a fraud upon the complainant and contrary or contrary to and in violation or in violation of said decree in said action No. 4424; deny that the defendants in this action, or these defendants and those defendants claiming under or through Thomas Bell, deceased, wrongfully and unlawfully, or wrongfully or unlawfully, claim and assert, or claim or assert, that the said reconveyance transferred and vested, or transferred or vested in said Teresa Bell, as such administratrix, the title of, in and to, or of, in or to, said tract of land consisting of 10,067.2

acres, including, or excluding, any and all, or any or all, rights, title and interest, or any rights, title or interest, of said complainant.

Admit and allege that the defendants claim, and properly and lawfully so, that the said reconveyance discharged the lien of the said judgment in the said action No. 4424; allege that prior to and until the time of such reconveyance the said heirs and devisees of the said Thomas Bell, deceased, and his said estate, were the owners of all of the said tract of land, subject only to the burden and charge of the said lien, having acquired such ownership as described in paragraph V of the first defense hereinabove in this answer set forth, and that the defendants claim that such reconveyance discharged such lien and left their ownership one free and clear of any lien or charge whatsoever.

Deny that the claim made by the defendants is without merit, wrongful and unlawful, or without merit, wrongful or unlawful, or contrary to and in conflict or in conflict with said judgment in the said action No. 4424, and a fraud or a fraud upon the complainant, and was and is, or was or is, made with the wrongful, fraudulent and unlawful, or wrongful, fraudulent or unlawful, intents, purposes and designs, or intents, purposes or designs, mentioned in the said paragraph "11th" of the said bill of complaint, and of defrauding, or of defrauding, the said complainant and its successors and grantees, or any of them, out of its or any interest in and title to, or interest in or title to, an undivided one-half, or any part, of the said 10,067.2 acres of land; deny that said Mercantile Trust Company of San Francisco has wholly or at all failed and neglected, or failed or neglected, to perform its duties, if any, as trustee under said decree in said action No. 4424, and has, or has, as in paragraph "11th" of the said bill of complaint alleged, attempted to transfer and dispose of the said, if any, or any trust property, the said tract of 10,067.2 acres of land, or any part thereof, contrary to and in violation of, or in violation of the trust, if any, declared or set forth in said decree in said action No. 4424, and

with or with the wrongful, unlawful and fraudulent, or wrongful, unlawful or fraudulent, or any, intents, objects, purposes and designs, or intents, objects, purposes or designs, in the said paragraph "11th" of the said bill of complaint alleged.

Admit that the said George Staacke had no personal interest or right or title in or to any of the proceeds of the sale of said tract of 10,067.2 acres of land adjudged to be made under and in pursuance of said decree in said action No. 4424, and his heirs, assigns and executor have no other different or greater right, title or interest in or to any such proceeds than said George Staacke had under said decree.

Deny that said George Staacke had no other right, title or interest whatever in or to said lands or to any of the proceeds of the sale of said lands under said decree than that of trustee for the benefit of the U. S. Oil & Land Company, its successors and assigns.

Allege that said George Staacke held title to said lands, and to all proceeds of any sale thereof under said decree, as trustee, to make the payments required under the terms of that certain judgment and decree dated the 17th day of October, 1904, pleaded and set forth in paragraph II of the first defense hereinabove in this answer made.

XIX. As to the allegations in paragraph "11th" of the said bill of complaint, as follows: That on or about the 3d day of March, 1911, the San Luis Land and Improvement Company, a corporation, for a valuable consideration sold, granted, transferred and conveyed in fee simple to the complainant by deed and conveyance an undivided one-half of said 10,067.2 acres and tract of land described in the said bill of complaint, and said deed was thereafter and on the fifth day of March, 1911, duly filed for record and recorded in the office of the County Recorder in said County of Santa Barbara in Book of Deeds No. 131 on pages 109 to 110 thereof; that said John S. Bell on the 22nd day of December, 1896, for a valuable consideration granted, bargained, sold and conveyed to Catherine M. Bell, his wife,

one of the defendants above named, said tract or piece of land of 10,067.2 acres, in fee simple absolute, and made, executed and delivered to her a grant, bargain and sale deed granting, transferring and conveying for a valuable consideration to said Catherine M. Bell, known also as ^Kate M. Bell, said 10,067.2 acres and tract of land; that said deed of John S. Bell to Catherine M. Bell was dated the 22nd day of December, 1896, and was recorded in the office of the County Recorder of Santa Barbara County on the 18th day of June, 1897, in Book 59 of Deeds at page 579; that said John S. Bell and Catherine M. Bell did on the 12th day of June, 1897, for a valuable consideration grant, bargain, sell and convey in fee simple absolute to James L. Crittenden and Sidney M. Van Wyck, Jr., an undivided one-half of said tract or piece of land consisting of 10,067.2 acres of land, and did make, execute, acknowledge and deliver to said James L. Crittenden and Sidney M. Van Wyck, Jr., a grant, bargain and sale deed and conveyance wherein and whereby they, said John S. Bell and Catherine M. Bell, did grant, bargain and sell and convey for a valuable consideration to said James L. Crittenden and Sidney M. Van Wyck, Jr., and to their heirs and assigns, an undivided one-half of said tract or piece of land of 10,067.2 acres; that said deed from said John S. Bell and Kate M. Bell to said James L. Crittenden and Sidney M. Van Wyck, Jr., was dated the 12th day of June, 1897, and was duly recorded in the office of the County Recorder of Santa Barbara County, State of California, on the 18th day of June, 1897 in Book 59 of Deeds at page 582; that on the 7th day of March, 1899, for a valuable consideration by grant, bargain and sale deed and conveyance said Sidney M. Van Wyck, Jr., granted, bargained, sold and conveyed in fee simple to said James L. Crittenden and to his heirs and assigns forever all his right, title and interest of, in and to said tract or piece of land of 10,067.2 acres, and that said deed was dated March 7th, 1899, and recorded in said Recorder's Office in Santa Barbara County on the 26th day of November, 1900, in Book 75 of Deeds at page

223; that the said deeds and conveyances so executed and recorded as aforesaid, by said John S. Bell and Catherine M. Bell, Sidney M. Van Wyck, Jr., James L. Crittenden and Nina D. Crittenden, U. S. Oil & Land Company, and San Luis Land and Improvement Company, each granted and conveyed an undivided one-half of all of that certain tract, piece and parcel of land consisting of 10,067.2 acres described in paragraph numbered 1st of the said bill of complaint, with the exception of the lots, pieces and parcels mentioned in said paragraph 1st as excepted from the 10,067.2 acres tract described therein; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Deny that any of the said deeds or conveyances was good and sufficient, or good or sufficient, or of any effect whatsoever.

XX. As to the allegations in paragraph "12" of the said bill of complaint, as follows: That the Associated Oil Company, defendant herein, is a corporation duly organized and existing under the laws of the State of California with its principal place of business in said State of California; that the Associated Transportation Company, defendant herein, is a corporation duly organized and existing under the laws of the State of California, with its principal place of business in said State of California; that the Union Oil Company of California, defendant herein, is a corporation duly organized and existing under the laws of the State of California, with its principal place of business in said State of California; that each and every one of the defendants mentioned in the title of the said bill of complaint is a citizen and resident of the State of California; that said U. S. Oil & Land Company is a citizen of the State of Arizona; that Teresa Bell, Thomas Frederick Bell, Bessie M. Bell, known also as Elizabeth M. Bell; W. E. Bell, known also as Eustace Bell; Reginald Bell, T. M. Bell, Muriel Bell, also known as Muriel Margaret Bell; Robina Bell, Katherine M. Bell; known also as Kate M. Bell; Marie T. Holman, formerly Marie T. Bell; Arthur

S. Holman, husband of Marie T. Holman; Henry G. Meyer, Josephine M. Holbrook, John Lewellyn Auzeais, Daniel A. McColgan, Peter J. Crosby, Robina Vellguth, George Henry Howard, O. H. Harshbarger, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, C. H. Williams, Charles H. Pearson, Peter Guidotti, George Guidotti, Guidotti Bros., Baptiste Ferrini, J. Doherty, Henry N. Evans, J. S. Evans, Joseph Smith, Joseph Pico, John Doherty, Dario de la Guerra, William Gewe, John S. Bell, R. McColgan, Reginald McColgan, Clarence Vellguth, M. Dominguez, Mercantile Trust Company of San Francisco, San Francisco Savings Union, Savings Union Bank and Trust Company, Union Oil Company of California, The Associated Oil Company, The Associated Transportation Company, Rauer's Law and Collection Company, John Doe, James Doe, John Roe, James Roe, Jane Doe, Jane Roe, Mary Doe, Mary Roe, Richard Roe, Henry Roe and Kate Roe, defendants, are citizens and residents of the State of California, and that each of said defendants is a citizen and resident of said State of California; that the name of said San Francisco Savings Union has been changed to Savings Union Bank and Trust Company by and under a judgment of the Superior Court of the State of California, in and for the City and County of San Francisco duly made, rendered and entered in a proceeding duly commenced and prosecuted by said San Francisco Savings Union and the directors thereof, and that a certified copy of said judgment changing the name of said San Francisco Savings Union as aforesaid has been duly filed with the Secretary of State of the State of California; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Admit that these defendants are citizens and residents of the said State of California, and that each of them is a citizen and resident of the said State of California; allege that these defendants are residents of the Northern District of the said State of California.

XXI. As to the allegations in paragraph "14th" of

the said bill of complaint, as follows: 'That said George Henry Howard has made, executed and delivered to O. H. Harshbarger a pretended deed and conveyance purporting to transfer and convey all the right, title and interest of said George Henry Howard in and to said tract, piece and parcel of land of 10,067.2 acres; that said George Henry Howard and O. H. Harshbarger had notice and knowledge at the time of and before said pretended deed and conveyance was made by said Howard to said Harshbarger of the title of complainant to an undivided one-half of said 10,067.2 acres and tract of land and of each and all of the facts and matters set forth in the said paragraph of the said bill of complaint; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Deny the said title of complainant to any portion of or interest in said tract of land; deny the said facts and matters, as follows: Deny that the said tract of land had been and was or had been or was deeded and conveyed, or deeded or conveyed, by Dwight W. Grover and Samuel Rosener on or about the 7th day of March, 1889, or at all, in trust for the benefit of John S. Bell; deny that the said John S. Bell was then the owner of the said tract; deny that said Grover and Rosener had on and prior to March 7th, 1889, or at all, agreed to reconvey said tract of land to said John S. Bell, and that or that said George Staacke paid no consideration whatever for said tract, piece or parcel of land of 10,067.2 acres or for any part or portion thereof or for said or any deed and conveyance executed to him by said Grover and Rosener, and that, or that, said George Staacke received and accepted or received or accepted said or any deed and conveyance, and held or held the title to said 10,067.2 acres of land as such trustee, and not otherwise, or at all, from the time he received the same to the time of his death, or at all, and that or that the decrees in the said bill of complaint mentioned had been made and entered by said Superior Court of Santa Barbara County; deny that said or any deed and con-

veyance made by said Howard to said Harshbarger was made with the fraudulent and unlawful, or fraudulent or unlawful or any, intent, object, purpose and design, or intent, object, purpose or design, to defeat said alleged or any trust upon which said land had been conveyed by said Grover and Rosener to said George Staacke, as alleged in the said bill of complaint, and to deprive or to deprive the complainant and the successors in interest of John S. Bell, or any of them, of the or any benefits of the said alleged or any trust and of or of their or any rights thereunder, or otherwise or at all.

And as further supporting their denial, and explaining the alleged claims of the plaintiff, these defendants hereby refer to that final decree, dated the 12th day of October, 1904, pleaded and set forth in paragraph 11 of the first defense hereinabove in this answer made.

XXII. Admits that the matter in controversy in this suit exceeds, exclusive of interest and costs, the sum or value of ten thousand dollars and that the real property involved in this suit exceeds in value the sum of one million dollars; that the matter in controversy in this suit is between citizens of different states, that is, between the complainant, a citizen of the State of Arizona, and these defendants, who are citizens of the State of California; that each and all of the defendants had notice of said judgments and decrees, and of said findings in the said bill of complaint mentioned and set forth, and had such notice before these defendants or any of them entered upon said tract of land or paid any money or consideration for any right or interest therein or thereto; that these defendants, W. P. Hammon and F. C. van Deinse, did on or about the 1st day of June, 1911, enter upon a portion of said lands and bore or cause to be bored a well for the purpose of extracting oil from said land with the intent, object, purpose and design to appropriate to their own use or to the use of one of them any and all oil obtained or extracted from said lands; admit that said defendants W. P. Hammon and F. C. van Deinse threaten and are about to bore or cause to be bored other wells with the intent, object,

purpose and design of extracting oil from said land and appropriating all oils extracted therefrom to the use of one or both of them and will, unless restrained and enjoined by this Honorable Court, extract large quantities of oil from said lands, sell the same, and appropriate the proceeds thereof to the use of one or both of said defendants.

Denies that these defendants, or either of them, ever had any notice of the, or any, right, title and interest or right, title or interest of the complainant in and to or in or to an undivided one-half or any portion of the said tract of land; deny that the entry of these defendants, or their intent, object, purpose of design in making such entry, or in boring or causing to be bored wells, upon the said portions of the said tract of land, or that of either of them, are or is or were or was wrongful or unlawful; deny that the boring of wells or appropriation of oil by these defendants upon and from the said portion of the said tract of land, or either of such acts will greatly or at all depreciate the value of the said land or greatly or irreparably or at all injure or damage or cause loss to the said complainant or its alleged rights, interest and title, or any of them, in and to or in or to the said land.

Allege that the entry, boring of wells, and appropriation of oil by these defendants, upon and from the said portions of the said tract of land was and is a lawful and proper exercise of the right of ownership in and to the said portion of the said tract of land by these defendants.

XXIII. As to the allegations in paragraph "15th" of the said bill of complaint, as follows: That said Teresa Bell as such administratrix and claiming and asserting to have acquired the title in fee to said 10,067.2 acres of land by and under said deed dated May 26th, 1908, so as aforesaid made and executed by said Mercantile Trust Company of San Francisco and said San Francisco Savings Union has collected large sums of money as rents from the tenants on said tract of land aggregating about \$10,000, to which rents the complain-

ant claims to be entitled as the owner in fee of an undivided one-half of said tract of 10,067.2 acres of land; that the said Teresa Bell as such administratrix threatens to collect and appropriate to her own use as such administratrix all the rents, income and profits of said tract of 10,067.2 acres of land and will carry out said threats and collect and appropriate all of said rents, income and profits to her own use as such administratrix unless restrained and enjoined by this Honorable Court and by an injunction issuing in this suit out of the Court commanding her as such administratrix to desist and refrain from collecting the same or the one-half thereof which the complainant claims to be entitled; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

Deny that said Teresa Bell as such administratrix claims wrongfully or unlawfully to have acquired title to the said tract of land; deny that the appropriation by such administratrix of the profits of all such tract of land will cause great and irreparable, or great or irreparable, or any, loss, injury or damage to the complainant; deny that on or about the 20th day of May, 1908, or at all, the said Teresa Bell, Mercantile Trust Company of San Francisco, and San Francisco Savings Union, or any of them, combined and conspired, or combined or conspired, together or at all, to evade and defeat, or evade or defeat, the said decree in said action No. 4424, or otherwise or at all, and to deprive or to deprive said complainant of its or any right, title and interest, or right, title or interest, in and to or in or to an undivided one-half, or any portion, of said tract of land, and of or of its or any interest in and right to, or right to, the or any proceeds and every or any part of the proceeds that might be obtained by and from a sale of said tract of land, and did or did, in pursuance of said or any combination and conspiracy, or combination or conspiracy, or at all, and with or with the wrongful, unlawful and fraudulent, or wrongful, unlawful or fraudulent, or any, intent, object, purpose and design,

or intent, object, purpose or design, of evading and defeating or evading or defeating said decree in said action No. 4424, and of, or of depriving said complainant of its or any right, title and interest, or right, title or interest, in and to or in or to an undivided one-half or any portion of said tract of land and of, or of, any proceeds that might be obtained from a sale thereof under said decree in said action No. 4424, or otherwise or at all, have and cause, or have or cause, the deed dated May 26th, 1908, mentioned in paragraph "11th" of the said bill of complaint, to be made and executed or made or executed; deny that said deed was made, executed and delivered, or made, executed or delivered under and in pursuance of, or under or in pursuance of, said or any wrongful and unlawful, or wrongful or unlawful, or any, combination and conspiracy, or combination or conspiracy.

XXIV. As to the allegations in paragraph "15th" of the said bill of complaint, as follows: That said C. A. Hunt, one of the defendants, is County Clerk of said County of Santa Barbara and Clerk of said Superior Court of said County of Santa Barbara, and has in his possession and under his control the deed and conveyance made and executed by said George Staacke to Catherine M. Bell and James L. Crittenden and delivered to said Hunt, as alleged in the said bill of complaint, on the 8th day of July, 1901; these defendants state that they are without knowledge as to the said allegations, or any of them, or as to the subject-matter thereof.

XXV. Deny that any of the acts done or threatened to be done was or is a wrong to the said complainant; allege that the complainant has no right, title, interest, estate or equity, or any claim whatsoever, in the said tract of land or any part thereof or any proceeds thereof.

And in this behalf, and as more fully showing and explaining the invalid character and nature of the claims made by the said complainant, and the knowledge of the complainant at all times of such invalidity, and the reliance placed by these defendants, at the time of their

said purchases of interests in certain portions of the said tract of land, upon such invalidity, these defendants hereby expressly refer to paragraphs VIII, IX, X and XI of the first defense therein pleaded and set forth, with the prayer that all the matters therein pleaded may be deemed hereby incorporated herein as fully and wholly as though the same were herein set out and repeated at length.

Allege that these defendants at all times were and are purchasers in good faith, and for good and valuable considerations, of the said interests, without knowledge of any matters relating to the said tract of land save those disclosed on the face of the records of title thereto and of the said divers court proceedings; allege that by this action the complainant is endeavoring to raise anew questions of fact and of law repeatedly and finally decided against it by the Supreme Court of the State of California.

Deny that the complainant has no plain, speedy or adequate remedy at law.

Wherefore, these defendants pray that the complainant's bill of complaint may be dismissed and that these defendants have and recover their costs and disbursements herein.

Chauncey S. Goodrich,
Solicitor for the Said Defendants.

Charles W. Slack, of Counsel.

State of California, City and County of San Francisco, ss.

W. P. Hammon, being first duly sworn, deposes and says: That he is one of the defendants in the within entitled cause, that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters, that he believes it to be true.

W. P. Hammon.

Subscribed and sworn to before me this 14th day of March, A. D. 1913.

Charles Edelman,

Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

Receipt of a copy of the within Answer admitted this 14th day of March, 1913.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

(Endorsed. Filed March 17, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

At a stated term, to-wit, the January term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court room thereof, in the City of Los Angeles, on Wednesday, the nineteenth day of March, in the year of our Lord, one thousand nine hundred and thirteen.

Present: The Honorable Frank H. Rudkin, District Judge. No. 140 Civil, S. D. U. S. Oil & Land Complainant, vs. Teresa Bell, et al., Defendants.

This cause coming on this day to be heard separately on the special defense, viz., previous judgments, etc., as set up by the bill and answer; T. Z. Blakeman, Esq.; Chauncey S. Goodrich, Esq., and Peter J. Crosby, Esq., appearing as counsel for defendants, and no counsel appearing on behalf of complaint; it is ordered that said cause be and the same hereby is continued until Thursday, the 20th day of March, 1913, at 10:30 o'clock a. m., for said hearing.

At a stated term, to-wit, the January term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court room thereof, in the City of Los Angeles, on Thursday, the twentieth day of March, in the year of our Lord, one thousand nine hundred and thirteen.

Present: The Honorable Frank H. Rudkin, District Judge. No. 140 Civil, S. D. U. S. Oil & Land Complainant, vs. Teresa Bell, et al., Defendants.

This cause coming on this day to be heard separately

on the special defense, viz., previous judgments, etc., as set up by the bill and answer; James L. Crittenden, Esq., and F. J. Carrier, Esq., appearing as counsel for complainant; T. Z. Blakeman, Esq., Chauncey S. Goodrich, Esq., and Peter J. Crosby, Esq., appearing as counsel for defendants; and said special defense having been argued on behalf of complainant by James L. Crittenden, Esq., of counsel for complainant; it is thereupon ordered that said cause be and the same hereby is continued until the hour of 2 o'clock p. m., of this day, for further hearing.

At a stated term, to-wit, the January term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court room thereof, in the City of Los Angeles, on Thursday, the twentieth day of March, in the year of our Lord, one thousand nine hundred and thirteen.

Present: The Honorable Frank H. Rudkin, District Judge. No. 140 Civil, S. D. U. S. Oil & Land Complainant, vs. Teresa Bell, et al., Defendants.

This cause coming on at this time to be further heard on the special defense, viz., previous judgments, etc., as set up by the bill and answer; James L. Crittenden, Esq., and F. J. Carrier, Esq., appearing as counsel for complainant; T. Z. Blakeman, Esq., Chauncey S. Goodrich, Esq., and Peter J. Crosby, Esq., appearing as counsel for defendants; and said special defense having been further argued on behalf of complainant by James L. Crittenden, Esq., of counsel for complainant, and on behalf of defendants by T. Z. Blakeman, Esq., of counsel for defendants; and Court, at the hour of 3:30 o'clock p. m. having taken a recess for 5 minutes; and now at the hour of 3:35 p. m., Court having reconvened; and counsel being present as before; and said special defense having been further argued on behalf of defendants by Chauncey S. Goodrich, Esq., of counsel for defendants, and on behalf of complainant in reply by James L. Crittenden, Esq., of counsel for complainant; it is ordered that said cause be and the same hereby is submitted to

the Court for its consideration and decision on said special defense upon the oral argument thereof and on briefs to be served and filed as follows, to-wit: On behalf of complainant within fifteen (15) days, on behalf of defendants within fifteen (15) days thereafter, and on behalf of complainant in reply within ten (10) days thereafter.

In the District Court of the United States for the Southern District of California, Southern Division. No. 140. Civil.

U. S. Oil & Land Company, a Corporation, Complainant, vs. Teresa Bell, as Administratrix of the Estate of Thomas Bell, Deceased, with the Will Annexed, et al., Defendants.

James L. Crittenden and Richards & Carrier, solicitors for complainant.

T. Z. Blakeman and Chauncey S. Goodrich, solicitors for defendants.

Rudkin, District Judge.

This is a suit in equity to quiet title to an undivided half interest in a tract of land embracing approximately 10,000 acres situate in Santa Barbara County, California. The defendants have pleaded in bar certain judgments of the Courts of the State of California and a judicial sale thereunder, and it has been agreed between the parties that such defenses may be separately heard and disposed of before the trial of the principal case, under Equity Rule 29.

Some years prior to the 29th day of June, 1901, John S. Bell as plaintiff, brought an action in the Superior Court of Santa Barbara County, California, against George Staacke and John W. C. Maxwell as executors of the will of Thomas Bell, deceased, and also against one Louis Jones, to have a trust declared in his favor against the defendant Staacke in 10,000 acres of land in Santa Barbara County, the title to which stood of record in the name of the latter, and to compel a conveyance thereof to him by Staacke. Teresa Bell, administratrix of the estate of Thomas Bell, de-

ceased, was afterwards substituted for the defendants Staacke and Maxwell as executors. The defendant Staacke individually and Teresa Bell, as administratrix, by answer and cross-complaint set up that the land was held by Staacke subject to a trust in favor of the estate of Thomas Bell, deceased, to secure certain advances made by Thomas Bell in his lifetime at the instance and for the benefit of the plaintiff, and prayed that this latter trust be declared superior to the trust asserted by the plaintiff. The trial court on the above date decreed that the land was held by Staacke in trust solely for the plaintiff and was not subject to any trust in favor of the estate of Thomas Bell, deceased, and directed a conveyance by the defendant Staacke to the plaintiff. The Court, however, under the cross-complaint, awarded the administratrix of the estate of Thomas Bell, deceased, a personal judgment against the plaintiff for the sum of approximately \$52,000, the balance due from plaintiff for money advanced and loaned by the deceased prior to his death on October 16, 1892. The defendants appealed from that portion of the decree adjudging that the land was not subject to a trust in favor of the estate of Thomas Bell, deceased, and also from an order denying their motion for a new trial. Their appeal from the judgment was dismissed by the Supreme Court of the state (137 Cal., 307) and the order denying the motion for a new trial was affirmed by a Department decision (70 Pac., 472). A rehearing was later granted by the Court en banc as to the Department decision, and the Court thereafter, on rehearing, set aside the decision of the Department, reversed the order denying the motion for a new trial and awarded a new trial in the Court below, except as to certain issues not material here. During the pendency of the action in the Superior Court and before final judgment the plaintiff John S. Bell conveyed all his right, title and interest in the land in controversy to Katherine M. Bell and James L. Crittenden, but the action was continued in the name of the original plaintiff. At the time of prosecuting the appeal from the decree of June 29, 1901,

the defendant Staacke made and executed a deed of the property described in the decree in favor of Katherine M. Bell and James L. Crittenden and deposited the same in the registry of the Court in order to obtain a stay of execution as required by the laws of the State of California. The undivided one-half interest conveyed to Crittenden is now vested in the complainant through mesne conveyances. Upon the retrial of the action upon the same pleadings the trial Court decreed that the defendant Staacke held the title to the land in trust, first, as security for the payment of the sum of approximately \$95,000 due the estate of Thomas Bell, deceased (being the amount found due in the cross-complaint at the former trial, with interest), and second, in trust for the use and benefit of the plaintiff. A sale of the land was decreed for the payment of this indebtedness, together with costs. The plaintiff appealed from this judgment and also from an order denying a motion for a new trial, but the appeal from the judgment was dismissed (83 Pac., 245) and the order denying the motion for a new trial was affirmed (91 Pac., 322). The property was thereafter sold as directed by the decree and Teresa Bell became the purchaser at the execution sale. No redemption was made within the time provided by law and in due course the purchaser received a deed from the commissioner who conducted the sale.

On the first day of February, 1892, George Staacke executed his promissory note in favor of The San Francisco Savings Union for the sum of \$60,000, and at the same time made and executed a deed of the 10,000 acre tract and also of a 4000 acre tract not in controversy here to Henry C. Campbell and Thaddeus D. Kent as trustees to secure the payment of the note. Campbell and Kent were afterwards succeeded by The Mercantile Trust Company of San Francisco, a corporation, as trustee. While the action of John S. Bell against George Staacke and others was still pending Katherine M. Bell, James L. Crittenden and one Sidney M. Van Wyck, Jr., claiming as successors in interest of John S. Bell, brought an action against The San Francisco Savings Union,

its trustees, and the successors in interest of Thomas Bell, deceased, to obtain a decree quieting the title of the plaintiffs in and to the 10,000 acre tract above referred to against the trust deed to Campbell and Kent. In this action a cross-complaint was filed by The San Francisco Savings Union setting up its right under the deed of trust, and upon the trial a decree was entered directing The Mercantile Trust Company trustee to sell both tracts of land, selling the 10,000 acre tract first, and to pay out of the proceeds of the sale to The San Francisco Savings Union the amount found to be due it on its note and the balance of the proceeds, if any, to the defendant Staacke, his heirs and assigns. It was further adjudged that the plaintiffs take nothing by their action. An appeal was prosecuted from this judgment to the Supreme Court of the State and also from an order denying a motion for a new trial, but the order denying the motion for new trial was affirmed and the cause remanded to the Court below with directions to modify its judgment by deducting therefrom the amount of approximately \$16,000, and as thus modified the judgment was in all things affirmed (94 Pac., 225). This decree was later paid and satisfied by Teresa Bell without a sale of the premises.

The bill and answers are very voluminous, but I deem the foregoing statement sufficient to a proper understanding of the legal questions involved. As will be observed, the complainant bases its claim of right or title on the deed from John S. Bell to Crittenden, on the first or original decree in *Bell v. Staacke*, *supra*, and on the deed deposited by Staacke with the Clerk of the Court in order to effect a stay of proceedings pending the appeal; and this notwithstanding the fact that the decree upon which it relies was afterwards vacated by the Supreme Court of the State and an entirely different decree entered upon a retrial, which was later affirmed by the Supreme Court on appeal. By the latter decree and the judicial sale made thereunder every right, title and interest of John S. Bell and his successors in interest became vested in the purchaser at the sale under the

commissioner's deed. But the complainant seeks to avoid the binding force of the second decree on several grounds. First. Because after dismissing an appeal from the final judgment the Supreme Court of the State was without jurisdiction to award a new trial. Second. Because the legal title to the property was vested in Campbell and Kent as trustees and the whole proceeding before the Court was therefore *coram non judice* and void; and, lastly, because the decree in *Bell v. San Francisco Savings Union* was later in point of time than the decree in *Bell v. Staacke* and is inconsistent therewith.

1. These several contentions are wholly without merit. Whether the Supreme Court of the State of California has jurisdiction to award a new trial in an action after dismissing an appeal from a final judgment depends solely and exclusively upon the constitution and laws of that state, and the repeated decision of its highest court upholding the jurisdiction are not subject to review in this or any other tribunal.

2. A court of equity would scarcely permit the complainant to claim under the original decree and in opposition thereto at the same time, but aside from this the contention is without merit. While undoubtedly title vests in a trustee for some purposes under the laws of the State of California, nevertheless in that State as well as elsewhere, until there is a breach of condition, the cestuique trust is deemed the beneficial owner of the property, may convey or encumber it, and may maintain any real action affecting the title.

Sacramento Bank v. Alcorn, 121 Cal., 279.

Hodkins v. Wright, 127 Cal., 688.

3. On this point again the complainant is confronted by an adverse decision of the Supreme Court of the State. In the case of *Bell v. San Francisco Savings Union*, 153 Cal., 74, the Court expressly held that there was no inconsistency between the two decrees; that the matter *sub judice* in *Bell v. Staacke* was excepted from the operation of the decree in the *Savings Union Case*, and this is manifestly true.

For the foregoing reasons it affirmatively appears

from the bill of complaint and the admitted judgments set forth in the answers that the bill is without equity and should be dismissed. Let a decree be entered accordingly.

(Endorsed.) Opinion. Filed July 8, 1913. Wm. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Decree.

This cause came on to be heard in the District Court of the United States, for the Southern District of California, Southern Division, the Honorable Frank H. Rudkin, District Judge of the United States for the Eastern District of Washington, duly presiding, on the 20th day of March, A. D. 1913, upon the defense heretofore presentable by plea in bar made in the pleadings to the bill of complaint on file herein as follows: The joint and several answer of the defendants Teresa Bell, as administratrix with the Will annexed of the estate of Thomas Bell, deceased, and Teresa Bell, individually; the joint and several answer of the defendants Thomas Frederick Bell, Bessie M. Bell, wife of Thomas Frederick Bell, also known as Elizabeth M. Bell, W. E. Bell, also known as Eustace Bell, Reginald Bell, John Lewellyn Auzeais and Peter J. Crosby; the joint and several pleas in bar of the defendants W. P. Hammon and F. C. Van Deinse, heretofore overruled; and the joint and several answer of the said defendants W. P. Hammon and F. C. Van Deinse; and at the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered and all the proceedings taken and acts done thereunder, were taken and done substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the said joint and several answer of

the defendants W. P. Hammon and F. C. van Deinse; and at the said hearing it being further stipulated and agreed by the complainant and the said defendants that a decision might be given and made upon the said defenses, and decree thereupon entered herein accordingly, although at the time of such decision and entry the judge presiding might no longer be sitting in the above entitled Court; and the said cause having been argued by counsel and submitted; and the Court upon consideration of the said defenses having sustained the same and having ordered that the said bill of complaint be dismissed and that a decree of dismissal be made and entered accordingly;

Now therefore it is by the Court Ordered, Adjudged and Decreed that the bill of complaint herein be and the same is hereby dismissed and that the above named defendants do have and recover from the complainant their costs herein taxed at \$—.

Dated July 17, 1913.

Frank H. Rudkin, Judge.

Decree entered and recorded July 21, 1913.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

Costs taxed in favor of defendants W. P. Hammon and F. C. Van Deinse at \$95.30.

Wm. M. Van Dyke, Clerk.

By Chas. N. Williams, Deputy Clerk.

(Endorsed) Decree filed July 21st, 1913, Wm. M. Van

(TITLE OF COURT AND CAUSE.)

Dyke, Clerk.

Title of Court and Cause.

Notice of Motion to Correct Decree.

To Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust

Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, and Teresa Bell, and to your Solicitor, T. Z. Blake-man:

To Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerais and P. J. Crosby, and to Peter J. Crosby your Solicitor:

To W. P. Hammon and F. C. Van Deinse and to Chauncy S. Goodrich, your Solicitor:

To Associated Oil Company and Edmund Tauszky your Solicitor:

To Catherine M. Bell, also known as Kate M. Bell, and to Sullivan and Sullivan and Theo. J. Roche, your Solicitors:

You and each of you are hereby notified and will please take notice that on the 6th day of December, 1913 at 10 o'clock in the forenoon of said day, the complainant will move and apply to the above entitled court at and in the courtroom thereof in the United States Post-office Building in the City of Los Angeles, County of Los Angeles, State of California, to correct and modify the decree heretofore made and signed on the 17th day of July, 1913, by Honorable Frank H. Rudkin, Presiding Judge of said Court by striking out of said decree the following words, to-wit:

"and at the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder were taken and done substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the joint and

several answer of the defendants W. P. Hammon and F. C. Van Deinse;”

and also by inserting in place of said words the following language, to-wit:

“and at the said hearing it being admitted and stipulated by the complainant and defendants above named, that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California in and for the County of Santa Barbara, and the Superior Court of the State of California in and for the City and County of San Francisco, are substantially correct copies thereof.”

You are further notified and will please take notice that the said motion to correct and modify said decree will be made and based upon the records, files and proceedings in this action and upon the affidavit of James L. Crittenden hereto annexed, and upon each of the following grounds, to-wit:

1. That the statement made and contained in said decree and above quoted is not true and is incorrect;

2. That no such admission or stipulation as is stated in said decree was ever made or entered into by the complainant or by the solicitors, or any of the solicitors for said complainant;

3. That the only admission or stipulation made and entered into by the complainant, or by its solicitors, or any of its solicitors, on the hearing of the above entitled action, or any proceedings therein was

“that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California in and for the County of Santa Barbara, and the Superior Court of the State of California in and for the City and County of San Francisco, are substantially correct copies thereof;”

4. That justice demands and will be promoted by the

correction and modification of said decree in accordance with this motion and application;

5. That said decree should be made to conform to the truth.

Respectfully Submitted,

Richards and Carrier and James L. Crittenden, Solicitors for Complainant.

Barclay Henley and Jacob M. Blake of Counsel for Complainant.

Good cause appearing therefor it is hereby ordered that the time within which the foregoing notice of motion may be served is hereby shortened to 3 days and service thereof may be made on or before the 2nd day of December, 1913.

Dated November 29, 1913.

Frank H. Rudkin, Judge.

(TITLE OF COURT AND CAUSE.)

State of California,

City and County of San Francisco, ss.

ss.

James L. Crittenden, being duly sworn deposes and says:

That he is one of the solicitors for Complainant and as such solicitor, with Charles F. Carrier, one of the other solicitors for the Complainant, appeared and represented Complainant on the hearing before the Honorable Frank H. Rudkin, presiding in the above entitled court on the 20 day of March, A. D. 1913, upon certain defenses set up in the pleadings of certain defendants and referred to in the decree made thereafter on the 17th day of July, 1913, by said Honorable Frank H. Rudkin, Judge:

That the only admission and stipulation made on said hearing in open court by the complainant, or any of its solicitors as to judgments, orders and decrees, or copies thereof, contained in, or set forth as exhibits in the pleadings of the respective parties was to the best of deponent's recollection and belief as follows:

"that the papers purporting to be copies of judg-

ments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California, in and for the County of Santa Barbara, and the Superior Court of the State of California, in and for the City and County of San Francisco, are substantially correct copies thereof:

That when solicitors for defendants requested admission, in open court, as to such copies, deponent stated that he would make the admission which he has herein above stated as to such copies being correct, but made no further or greater admission as to any such judgments, orders or decrees; that the admission and stipulation then made in regard to such copies of judgments, orders and decrees is not correctly or truly stated in said decree in and by the following language, to-wit:

“and at the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder were taken and done substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the joint and several answer of the defendants W. P. Hammon and F. C. Van Deinse;”

That the statement as to such admission and stipulation contained in said decree as above quoted is incorrect and untrue in fact, according to the best recollection and belief of deponent, and is prejudicial to the rights and interests of complainant and will in deponent's judgment and opinion be prejudicial to the complainant on the appeal which complainant intends to take and prosecute from said decree; that the form of said decree was not submitted to deponent or to either of the counsel for complainant and was not, as he believes, submitted to

Richards and Carrier, solicitors for complainant, or to either of them prior to the signing and filing thereof by said judge;

That deponent has requested the Honorable Frank H. Rudkin to correct and modify said decree by striking out the words

"and at the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder were taken and done substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the joint and several answer of the defendants W. P. Hammon and F. C. Van Deinse;"

and by inserting in place thereof the following language:

"and at the said hearing it being admitted and stipulated by the complainant and defendants above named that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California, in and for the County of Santa Barbara, and the Superior Court of the State of California, in and for the City and County of San Francisco, are substantially correct copies thereof;"

That said judge has declined to do so without notice being served upon the parties to said suit;

That complainant's solicitors and counsel have requested the solicitors for some of the defendants mentioned in said decree to sign a stipulation consenting to such a modification and correction of said decree and that such solicitors for defendants have declined to do so.

James L. Crittenden.

Subscribed and sworn to before me this 18th day of November, A. D. 1913.

(Seal)

Flora Hall, Notary Public in and for the City and County of San Francisco, State of California.

Received copy of the within notice this 2nd day of December, 1913.

Edmund Tauszky, Atty. for Associated Oil Co.

Chauncey S. Goodrich, Solicitor for W. P. Hammon and F. C. Van Deinse.

Sullivan and Sullivan, and Theo. J. Roche.

Peter J. Crosby, Solicitor for W. E. Bell, also known as Eustace Bell, Thomas Frederick Bell, Bessie M. Bell, (wife of Thomas Frederick Bell), John Lewellyn Auzerais and Peter Crosby.

(Endorsed.) Received copy of within notice of motion and affidavit at San Francisco, Dec. 2d, 1913. T. Z. Blakeman, Solicitor for Teresa Bell et al. Filed Dec. 5, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

State of California,

City and County of San Francisco, ss.

Affidvit of Service by Mail.

Groom W. Walker, Jr., being first duly sworn deposes and says:

That he is an attorney at law and a citizen of the State of California over the age of twenty-one years and that he resides in the city of Alameda, County of Alameda, State of California; that Thomas O. Toland is the attorney of record for the Union Oil Company, a corporation, one of the above named defendants, in said cause, and that he, said Thomas O. Toland, has his office at the Union Oil Company Building, in the city of Los Angeles, County of Los Angeles, State of California; that in each of said two places there is a United States Postoffice and between said two places there is a regular communication by mail; that on the second day of December, 1913, deponent served a true copy of the Notice

of Motion and Affidavit herein on said Thomas O. Toland, the said attorney of said defendant, by depositing such copy of Notice of Motion and Affidavit, on said date, in the postoffice at the City and County of San Francisco, State of California, properly enclosed in an envelope, addressed to said Thomas O. Toland, attorney at law, Union Oil Company Building, Los Angeles, California, said place of office and prepaying the postage thereon.

Croom W. Walker.

Subscribed and sworn to before me this 4th day of December, A. D. 1913,

Hortense Gardner, Notary Public in and for the City and County of San Francisco, State of California.

(Seal.)

(Copy of Notice of Motion and Affidavit attached to the above affidavit of service omitted, as having already been incorporated in the transcript therein).

(Endorsed.) Affidavit of service of Notice of Motion to correct decree and affidavit, and affidavit of service by mail. Filed Dec. 5, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

State of California,

City and County of San Francisco, ss.

T. Z. Blakeman being duly sworn, deposes and says: That he is the solicitor for the defendants, Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, and all other defendants in the above entitled cause for whom he appeared as solicitor in the answer of said defendants filed in said cause June 3, 1912; that as such solicitor he attended at a session of the said District Court at Los Angeles on the 19th and 20th of March, 1913; that it had been announced that the Honorable Frank H. Rudkin, the judge who had heard and passed upon demurrers to the Bill of Complaint in said action thereto, that he would on March the 19th, 1913, proceed with the hearing of said cause so far as to determine the sufficiency of the judgments of the State Courts in the

actions of Bell vs. Staacke, et al., and of Bell vs. San Francisco Savings Union, et al., and subsequent proceedings therein as a defense to the cause of action alleged in the complainant's Bill of Complaint.

Prior to attendance at the session of the said Court as aforesaid, affiant in behalf of the defendants for whom he appeared and in behalf of the defendants for whom Peter J. Crosby appeared as solicitor, and in behalf of the defendants for whom Chauncy S. Goodrich appeared, procured exemplified copies of the final judgments of the Superior Court of the County of Santa Barbara, State of California, and of the Supreme Court of the State of California of those two actions entitled John S. Bell vs. Gerge Staacke, et al., and Bell vs. San Francisco Savings Union, et al., respectively as pleaded in the answers of the said defendants:

That the matter aforesaid came on for hearing before the Honorable Frand H. Rudkin, Judge, on the 20th day of March, 1913.

There were present at the calling of the said cause for hearing Chauncy S. Goodrich, solicitor for the defendants, Hammon, et al., Peter J. Crosby, solicitor for the defendants Eustace Bell, et al., affiant a solicitor for the defendants Teresa Bell, administratrix, etc., et al., James L. Crittenden and Mr. Carrier, solicitors for the complainant. Affiant stated to the Court that he had come prepared to prove the judgments and proceedings in the Superior Court of Santa Barbara, and of the Supreme Court of the State of California in the said actions of Bell vs. Staacke, et al., and Bell vs. San Francisco Savings Union, et al., alleged in the answers of said defendants by exemplified copies thereof.

It was thereupon stipulated in open Court by and between said solicitors for complainant and said solicitors for said defendants respectively, that the judgments, orders and decrees of the Superior Court of the State of California in and for the County of Santa Barbara, and of the Superior Court of the State of California in and for the City and County of San Francisco, and of the Supreme Court of the State of California and all pro-

ceedings thereunder as pleaded in the answers of said defendants, were substantially as alleged therein. Thereupon oral argument was made before the Court by the respective solicitors aforesaid for the complainant and for the said defendants upon the validity and effect of said judgments, orders and decrees and proceedings thereunder, and thereupon submitted to the Court upon briefs to be filed within fifteen days on behalf of the complainant, and within fifteen days thereafter on behalf of the said defendants and ten days for a reply on behalf of the complainant.

Thereafter, this affiant was served with the Points and Authorities on behalf of the complainant on the 14th day of April, 1913. On page 1 of said Points and Authorities on behalf of the complainant occurs the following statement:

"The writer of this brief has been confronted with the perplexing problems of law presented by the pleadings of this case since the expiration of the time limited by the Court for the presentation of Points and Authorities as to the effect of certain decrees set out in the Bill and Answers thereto."

Affiant states that the answering brief of affiant and of the said Peter J. Crosby was served upon the solicitors for the complainant on the 28th day of April, 1913; that on page 34 of said brief the following statement is made:

"It was stipulated by the respective counsel herein in open court preceding the oral argument that the findings and judgment in Bell vs. Staacke of June 29, 1901, and the findings and judgment in Bell vs. San Francisco Savings Union were substantially correct as set forth in the Bill of Complaint, and that the subsequent proceedings in that action and in Bell vs. San Francisco Union were substantially correct as set forth in the answers of the defendants."

Affiant further states that in the "Points and Authorities" of defendants W. P. Hammon and F. C. Van Deinse served upon the solicitors for complainant within the time allowed as aforesaid by the Court, there occurs a statement as follows:

"The present hearing is upon the issues presented by the existence, admitted by the complainant, of several judgments, orders and decrees of the Superior Court of Santa Barbara; The Superior Court of the City and County of San Francisco and the Supreme Court of the State of California which have been pleaded by the defendants as a separate affirmative defense to the whole Bill. These judgments and orders are pleaded on page 44 of the answer of these defendants."

That affiant was served with complainant's reply brief on the 8th day of May, 1913. On page 13 of said complainant's Reply Brief there is a statement as follows:

"The various defendants who have filed Reply Briefs herein have united in attacking the equity in the Bill of complaint. Their view of the manner of equity in the Bill follows naturally from the theory of the defense which they have advanced."

That nowhere does it appear either in the opening brief of complainant's solicitors or in their Reply Brief that solicitors for complainant were proceeding upon any stipulation concerning copies of orders, judgments or decrees or purported copies thereof; and affiant states that the said Reply Brief in behalf of the complainant did not contain any objection to the stipulation on which the matter was submitted to the Court as stated as aforesaid in the briefs on behalf of the defendants.

Affiant further states that on the 9th day of July, 1913, he received by letter from the clerk of the Court, a copy of the opinion rendered by the said Judge, the Honorable Frank H. Rudkin, and affiant has been informed and verily believes and therefore alleges that a copy of the said opinion was, on or about the said day, to-wit, July the 9th, 1913, received by the solicitors for the complainant, and that there occurs in the said written opinion the following statement:

First on Page 1 thereof, to-wit:

"The defendants have pleaded in bar certain judgments of the Courts of the State of California and a judicial sale made thereunder and it has been agreed

between the parties that such defenses may be separately heard and disposed of before the trial of the principal case, under equity rule 29."

Second on Page 6 thereof, to-wit:

"For the foregoing reasons it affirmatively appears from the Bill of Complaint and the admitted judgments set forth in the answers, that the Bill is without equity and should be dismissed. Let a decree be entered accordingly."

Affiant states that he never heard it stated or intimated by any of the solicitors for the complainant prior to on or about the 20th day of November, 1913, that any of the solicitors for the complainant claimed that there was any erroneous or incorrect statement in the decree of the Court as entered herein. The first that affiant had any intimation that it was claimed by any of the solicitors for the complainant, that there was any incorrect or erroneous statement in the said decree was, as aforesaid, on or about the 20th day of November, 1913, when some letters of solicitors' for complainant to the said Judge were exhibited to affiant and affiant was asked on behalf of the solicitors for complainant to stipulate that some change might be made in the said decree as entered. Affiant refused to make or enter into any such stipulation.

Affiant further states that he has read a copy of the affidavit of James L. Crittenden annexed to "Notice of Motion to correct Decree," and affiant denies that the statement of the stipulation contained in the said decree is incorrect and untrue or incirrect or untrue, and further affiant sayeth not.

T. Z. Blakeman.

Subscribed and sworn to before me this 3rd day of November, 1913.

(Seal.)

Edith W. Burnham, Notary Public in and for the City and County of San Francisco.

(Endorsed.) Affidavit of T. Z. Blakeman in opposition to Motion to Modify Decree. Received copy of within affidavit at San Francisco this 4th day of Decem-

ber, 1913. James L. Crittenden, Solicitor for Complainant. Filed December 6, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

State of California,

County of Alameda, ss.

Peter J. Crosby being duly sworn, deposes and says: That he is the solicitor for the defendants W. E. Bell, also known as Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell) and also known as Elizabeth M. Bell, John L. Auzerais and Peter J. Crosby;

That affiant has been served with a copy of the affidavit of James L. Crittenden, attached to a Notice of Motion to correct that certain Decree heretofore made and signed on the 17th day of July, 1913 by Hon. Frank H. Rudkin, residing Judge of the above entitled Court in the above entitled matter, by striking out of said Decree certain portions thereof, relating to a Stipulation made in open court at the hearing of the above entitled matter on the 20th day of March, 1913, and by inserting in lieu of said portion so sought to be struck out of said Decree, another and different Stipulation;

That affiant has read the said affidavit of said James L. Crittenden, and answering the allegations contained therein, alleges, to the best of his, this deponent's, recollection and belief, that the said Stipulation as set forth in the said Decree, is, in its scope and substance, the Stipulation made and entered into in open Court on the 20th day of March, 1913, in the above entitled matter by the Solicitors for Complainant and by Messrs. Chauncy S. Goodrich, T. Z. Blakeman and Peter J. Crosby representing certain defendants, respectively; and further, to the best recollection and belief of deponent, deponent avers that the Stipulation which complainant seeks to have inserted in said Decree in lieu of the portion so sought by it to be stricken therefrom, is not the only admission and Stipulation, or only admission, or Stipulation made on said hearing by the Com-

plainant, or any of its Solicitors, as to judgments, orders and decrees, or copies thereof contained in or set forth as exhibits in the pleadings of the respective parties;

Deponent further alleges, upon his best recollection and belief, that the Stipulation so now proposed by Solicitors for Complainant to have inserted in said Decree, was not made and entered into, or made, or entered into, in open Court at said hearing on the 20th day of March, 1913, as alleged in said affidavit of said James L. Crittenden, or at all;

Deponent, upon his best recollection and belief, denies that the admission and Stipulation contained in said Decree is incorrect and untrue, or incorrect, or untrue, in fact.

Further deponent sayeth not.

Peter J. Crosby.

Subscribed and sworn to before me this 4th day of December, 1913.

(Seal.)

H. S. Craig, Notary Public in and for the County of Alameda, State of California.

- (Endorsed.) Affidavit of Peter J. Crosby in opposition to Motion to Modify Decree. Service of the within affidavit admitted by receipt of copy thereof this 4th day of December, 1913. James L. Crittenden, Solicitor for Complainant. Filed December 6, 1913. Wm. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Affidavit in Opposition to Motion for Modification of Decree.

State of California,

City and County of San Francisco, ss.

Chauncy M. Goodrich, being first duly sworn, deposes and says: That he now is, and at all times hereinafter mentioned has been, an attorney at law and solicitor admitted to practice in all the courts of the State of California and in the above entitled District Court of the United States, and during all such times has been and now is one of the solicitors for the defendants W. P.

Hammon and F. C. Van Deinse in the above entitled proceeding; that on the 3rd day of June, 1912, affiant as such solicitor served and filed herein the joint and several demurrers of the said defendants to the bill of complaint herein; that on the 11th day of November, 1912, the said demurrer, together with the demurrers of other of the defendants herein, came on to be heard in the above entitled Court before Honorable Frank H. Rudkin; that upon the argument of the said demurrers affiant argued in the main that the bill was barred by the Statute of Limitations and by the laches of the complainant, and T. Z. Blakeman, Esq., solicitor for certain others of the defendants, argued that the said bill was barred by certain judgments of the Supreme Court of the State of California and of the Superior Courts of the State of California, in and for the City and County of San Francisco, and in and for the County of Santa Barbara, respectively; that upon such argument the complainant was represented by James L. Crittenden, Esq., and Charles F. Carrier, Esq.; that in reply to the argument of the said T. Z. Blakeman, Esq., the said solicitors for complainant then and there admitted the existence of the said judgments but contended and argued that the same could not be taken cognizance of by the Court upon demurrer, or unless the same were specially and specifically pleaded; that thereafter authorities on behalf of the parties to the said demurrers were filed with the Court and the said demurrers were submitted; that thereafter the Court overruled the said demurrers upon the ground, among others, that it could not take cognizance of the said judgments called to its attention by the said solicitor for certain of the defendants, and thereupon filed its opinion herein in support of such ruling in which, among other things, it said:

"If I felt at liberty to take judicial notice of the numerous orders and decisions that may have been entered in the courts of California in the course of the protracted litigation referred to in the bill, I would perhaps feel constrained to hold that there is no equity in the bill and that the demurrer should be sustained.

But I am satisfied I am not authorized to take judicial notice of judgments entered in the courts of the state. Doubtless this court will take judicial notice of the general rules of law declared by the Supreme Court of California in written opinions, but it will not take such notice of the judgment in any particular case unless properly pleaded and proved."

That on the 29th day of November, 1912, affiant served, and on the 2d day of December, 1912, filed, herein the joint and several pleas, and answers fortifying the same, of the said defendants W. P. Hammon and F. C. Van Deinse, in which affiant set up and pleaded, according to the practice in equity, the existence of the same judgments called as aforesaid to the attention of the Court upon the argument of the demurrers, and also certain acts performed in conformity with said judgments; that the said pleas were so served and filed prior to the going into force and effect of the new rules of practice for the courts of equity of the United States, promulgated by the Supreme Court of the United States on the 4th day of November, 1912, which said new rules of practice abolished pleas in bar; that the said pleas and the joint and several motion of the said defendants W. P. Hammon and F. C. Van Deinse for judgment on the pleas and the replication of the complainant thereto came on to be heard before the said Honorable Frank H. Rudkin on the 10th day of March, 1913, and were heard and argued on the same day; that upon said argument the complainant was represented by its said solicitors James L. Crittenden, Esq., and Charles F. Carrier, Esq.; that upon said argument the said solicitors for complainant admitted the existence of the said judgments pleaded as aforesaid, and the performance of the said acts thereunder, but contended that under the said new rules of practice the same should have been set up by affirmative answer and not by plea; that the said new rules of practice abolishing pleas in bar having gone into force and effect on the 1st day of February, 1913, and the said hearing being held after the said date, the Court then and there overruled the said pleas and the

said motion for judgment thereon, with leave to the said defendants W. P. Hammond and F. C. Van Deinse to file their answer or answers to the bill of complaint, wherein the matters set forth and pleaded in the said pleas might be affirmatively pleaded; that the said Court then and there asked affiant how soon affiant could serve and file such answer or answers, and upon affiant's reply that he would endeavor to serve and file such answer or answers prior to the 19th day of March, 1913, the Court thereupon, with the consent of all counsel, including the said solicitors for the complainant, fixed the said 19th day of March, 1913, for the hearing of the said cause upon the affirmative defense of the said judgments and the acts performed thereunder;

That affiant on the 14th day of March, 1913, served, and on the 17th day of March, 1913, filed, herein the joint and several answer of the said defendants W. P. Hammon and F. C. Van Deinse, wherein were set forth and pleaded the said judgments and acts; that on the 19th day of March, 1913, the Court was unable, through pressure of other matters, to hear the said cause upon the issues presented by the said bill of complaint and the said affirmative answer of the said judgments and acts; that the said hearing was therefore postponed to the 20th day of March, 1913; that on the said 20th day of March, 1913, the said cause came on to be heard before the said Honorable Frank H. Rudkin upon the said bill of complaint and the said joint and several answer of the said defendants W. P. Hammon and F. C. Van Deinse, and particularly upon the said affirmative defense of the said judgments and acts therein pleaded, and upon the answers of other defendants herein; that at the said hearing affiant, together with the said T. Z. Blakeman, Esq., had in his possession and proceeded to present in evidence correct exemplified and certified copies of the originals of all the said judgments, and the deeds and other papers executed thereunder, pleaded as aforesaid; that thereupon the said solicitors for complainant, James L. Crittenden, Esq., and Charles F. Carrier, Esq., specifically and unqualifiedly stipulated and admitted in

open Court that judgments of the said Supreme Court of the State of California and of the Superior Courts of the State of California in and for the City and County of San Francisco, and in and for the County of Santa Barbara, respectively, existed, and that acts had been performed thereunder, substantially as pleaded in the joint and several answer of the defendants W. P. Hammon and F. C. Van Deinse, and substantially as pleaded and set forth in the answers of the other defendants herein; that thereupon the matter of the said defense was fully argued orally and submitted upon briefs; that during the said oral argument both the said counsel for complainant and the said T. Z. Blakeman, Esq., and affiant for the defendants, cited and quoted and read from the several opinions of the Supreme Court of the State of California given in support of the said judgments pleaded as aforesaid; that at all times during the said argument the existence of the said judgments, and the performance of the said acts, as pleaded was admitted by the said solicitors for the complainant, whose argument was that such judgments, or certain of them, though all of them were existing and had been rendered as pleaded, were nevertheless invalid and the said acts admitted to have been performed thereunder therefore void; that thereafter lengthy briefs in the said cause, in the main upon the question of the validity of the said judgments and the said acts, were served and filed herein by the respective parties, two whereof were served and filed by the said solicitors for the complainant; that the said briefs on behalf of the complainant took for granted and admitted the rendition and existence of the said judgments, and the performance of the said acts, pleaded as aforesaid, and contended merely that the said judgments, or some of them, were invalid and the said acts performed thereunder void; that the contention of complainant that the said judgments and acts, though admittedly rendered, existing and performed, were invalid, was expressed in its opening brief, at page 6, as follows:

“Complainant contends that the Court had no juris-

diction after the 28th of June, 1901, over said decision, or judgment and that all subsequent proceedings in *Bell vs. Staacke* were void for want of jurisdiction."

that at no time since the 11th day of November, 1912, when the first hearing in the above entitled proceeding was had, has any of said counsel for complainant denied or questioned the rendition or existence of any of the said judgments, or the performance of the said acts thereunder, as pleaded, but, on the contrary the said counsel have at all times, both expressly and tacitly, admitted the rendition and existence of such judgments, and the performance of such acts, and having made such admission have thereupon proceeded to argue that the judgments so rendered and existing, and the acts so performed, were nevertheless invalid;

That on the 8th day of July, 1913, the Court filed its written opinion herein in which it considered and discussed the validity and effect of the said judgments, and of the said acts performed thereunder, in which it assumed and recognized, as under the facts it could not do otherwise, that the rendition and existence of the said judgments, and the performance of the said acts, as pleaded was admitted and stipulated to by the complainant and its said solicitors and that the only question was as to the validity and effect of the said judgments, or some of them, and the said acts performed thereunder; that in the said opinion the Court said, preliminarily:

"That defendants have pleaded in bar certain judgments of the courts of the State of California and a judicial sale thereunder, and it has been agreed between the parties that such defense may be separately heard and disposed of before the trial of the principal case, under Equity Rule 29."

In the said opinion it is further said, speaking of certain of the said judgments pleaded as aforesaid by the said defendants:

"But the complainant seeks to avoid the binding force of the second decree on several grounds. First. Because after dismissing an appeal from the final

judgment the Supreme Court of the State was without jurisdiction to award a new trial. Second. Because the legal title to the property was vested in Campbell and Kent as trustees and the whole proceeding before the court was therefore *coram non judice*and void; and, lastly, because the decree in *Bell vs. San Francisco Savings Union* was later in point of time than the decree in *Bell vs. Staacke* and is inconsistent therewith.

1. These several contentions are wholly without merit."

The said opinion closes as follows:

"For the foregoing reasons it affirmatively appears from the bill of complaint and the admitted judgments set forth in the answers that the bill is without equity and should be dismissed. Let a decree be entered accordingly."

That thereafter, in accordance with the practice in equity, and particularly in accordance with Rule 57 of the above entitled District Court of the United States, affiant prepared and, with the consent of the other solicitors for the defendants, forwarded to the Clerk of the above entitled Court for transmission to the said Honorable Frank H. Rudkin the form of the decree herein; that in the said form of decree appeared the following recital, a modification of a portion whereof is now sought by the complainant:

"At the said hearing it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California, in and for the County of Santa Barbara, and of the Superior Court of the State of California, in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder were taken and done, substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the said joint and several answer of the defendants W. P.

Hammon and F. C. Van Deinse; and at the said hearing it being further stipulated and agreed by the complainant and the said defendants that a decision might be given and made upon the said defenses, and decree thereupon entered herein accordingly, although at the time of such decision and entry the judge presiding might no longer be sitting in the above entitled Court; and the said cause having been argued by counsel and submitted; and the Court upon consideration of the said defenses having sustained the same and having ordered that the said bill of complaint be dismissed and that a decree of dismissal be made and entered accordingly;"

That the said recital properly and correctly set forth the stipulations and admissions made and the proceedings had at the said hearing; that the said decree was made and signed, in the form so prepared by affiant, by the said Honorable Frank H. Rudkin on the 17th day of July, 1913, and was filed herein on the 21st day of July, 1913; that on the 23rd day of July, 1913, affiant received from the Clerk of the said District Court a certified copy of the decree, and on the 24th day of July, 1913, forwarded copies of the said decree to T. Z. Blake-man, Esq., and Peter J. Crosby, Esq., solicitors for certain of the defendants herein, and a similar copy of the said decree to James L. Crittenden, Esq., solicitor for the complainant herein; that on the said 24th day of July, 1913, affiant also served upon the said solicitors for complainant a memorandum of costs and disbursements of the said defendants W. P. Hammon and F. C. Van Deinse in the said cause, together with a notice that the same would be taxed on the 4th day of August, 1913; that the said costs were on the said day taxed in favor of the said defendants, without question raised or made by the complainant or any of its said solicitors;

That no suggestion of any incorrectness in the said decree was ever made to affiant by the complainant or any of its solicitors, or anyone on its behalf, until the 17th day of November, 1913, when a clerk of Jacob M. Blake, Esq., of counsel for complainant, showed to affi-

ant certain correspondence theretofore had between the solicitors for complainant and the said Honorable Frank H. Rudkin, and thereupon requested affiant to stipulate to a modification of the said decree substantially as now prayed for by the complainant; that affiant then and there refused to enter into any such stipulation of modification, for the reasons: First, that it appeared from the said correspondence that the solicitors for complainant had attempted, but unsuccessfully, to obtain such modification from the Court improperly, *ex parte*, and without notice to the defendants or their counsel; second, because the said decree was not subject to or capable of modification; and third, because the said decree was correct and the recitals of the suggested modification were contrary to the facts;

That the said decree is clear and unambiguous; that the same does not, expressly, impliedly, necessarily or at all adjudge that the complainant stipulated to the validity of the said judgments or acts, but declares that the complainant stipulated, as was the fact, that the said judgments were rendered and the said acts performed; that any modification of the decree as suggested by Complainant would render the same ineffective for any purpose and would result in the travesty of justice; that if there were any possible ambiguity in the said decree and if there were any disposition, or any attempt made, by any person, to claim that the decree recited a stipulation on the complainant's part to the validity of the said judgments and acts, the whole record in the cause, including the opinion of the Court, the briefs of counsel, and this affidavit, would show conclusively and without shadow of doubt that the complainant never admitted the validity of the said judgments or acts and that the whole question repeatedly and at length argued before the Court in this cause was the very question of the validity of such judgments and acts.

That the motion herein for a modification of the said decree should be denied for the reasons: First, that the same has been improperly sought by solicitors for complainant; second, that the Court has no longer any juris-

diction to modify the said decree; and third, because the decree is correct and the modification suggested is contrary to the facts.

That this proceeding is an attempt to obtain from this court and from the Appellate Courts of the United States a review of final decisions rendered many years ago by the Courts of the State of California; that an examination of the said judgments and acts shows that there is not the slightest scintilla of equity in the bill of complaint; that the defense of this cause has proved a substantial burden to the defendants; that the pendency of this cause, prior to the decree herein, has seriously affected the merchantability of the titles of the defendants to the lands described in the bill of complaint; that an unnecessary modification at this time of the decree made and entered herein over four months ago cannot but renew the hardship which this proceeding has placed upon the defendants; that justice will not be served by any modification of the decree but, on the contrary, will be served only by a denial of the motion of complainant.

And affiant further deposes and says: That no copies of the two letters written by the several solicitors for the complainant to the Honorable Frank H. Rudkin prior to the 17th day of November, 1913, have yet or ever been served upon or left with affiant, nor have any copies of the answers of the Honorable Frank H. Rudkin to such communications of counsel, refusing to modify the said decree ex parte, been so served or left.

Chauncey S. Goodrich.

Subscribed and sworn to before me this 4th day of December, A. D. 1913.

Charles Edelman, Notary Public in and for the City and County of San Francisco, State of California.

(Seal.)

Service of the within affidavit and receipt of a copy thereof is hereby admitted this 4th day of December, 1913.

James L. Crittenden and Richards & Carrier; by James L. Crittenden, Solicitors for Complainant.

(Endorsed.) Affidavit of Chauncey S. Goodrich in Op-

position to Motion for Modification of Decree. Filed December 6, 1913. Wm. M. Van Dyke, Clerk; By C. E. Scott, Deputy Clerk.

TITLE OF COURT AND CAUSE.

Affidavit in Reply of James L. Crittenden on Motion for Modification of Decree.

State of California,

City and County of San Francisco, ss.

James L. Crittenden, being duly sworn, deposes and says:

That he is now, and at all the times since prior to the commencement of the above entitled suit and for more than twenty years has been, an attorney at law and solicitor admitted to practice in all of the courts of the States of New York, California and Nevada and in all of the United States courts in the states of California and Nevada and in the Supreme Court of the United States; that he is one of the solicitors for the complainant in the above entitled suit and has been such solicitor in such suit since the commencement thereof; that he was one of the attorneys for the plaintiffs in the several actions in the Superior Court of the State of California in and for the County of Santa Barbara mentioned in the bill of complaint in the above entitled suit, and participated as such attorney in all the trials and proceedings in said actions in the said state court; that he, deponent, was not present on the 11th day of November, 1912, in the above entitled court on the hearing of the demurrers of the defendants to the bill of complaint in the above entitled suit and did not participate in the argument thereof; that the only solicitor representing the plaintiff on the hearing and argument of said demurrers was Charles F. Carrier, as deponent is informed and believes; that the complainant in and by its Bill in the above entitled suit claimed, averred and alleged that the first judgment rendered and entered in the action brought by John S. Bell vs. George Staacke et al., in said Superior Court was final and that said Superior Court and the Supreme Court of the State of California had no

jurisdiction whatever in or over said action after the entry of said first judgment of said Superior Court in said action, and that the same claim and contention was made on the hearing in the above entitled court on the 20th day of March, 1913, by the solicitors for complainant, also the claim and contention that every proceeding in said action of John S. Bell vs. George Staacke et all., subsequent to the entry of the first judgment therein was invalid, illegal and void; that the statement of Chauncey S. Goodrich in his affidavit sworn to on the 4th day of December, A. D. 1913

"that the said solicitors for complainant, James L. Crittenden, Esq., and Charles F. Carrier, Esq., specifically and unqualifiedly stipulated and admitted in open Court that judgments of the said Supreme Court of the State of California and of the Superior Courts of the State of California, in and for the City and County of San Francisco, and in and for the County of Santa Barbara, respectively, existed, and that acts had been performed thereunder, substantially as pleaded in the joint and several answer of the defendants W. P. Hammon and F. C. Van Deinse, and substantially as pleaded and set forth in the answers of the other defendants herein;"

is incorrect and untrue in fact to the best of deponent's knowledge, recollection and belief; that said statement refers to what occurred on the hearing on the said 20th day of March, 1913, and that to the best of deponent's knowledge, recollection and belief deponent as solicitor for complainant when the matter of making an admission was presented on said hearing, stated

"that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California, in and for the County of Santa Barbara, and the Superior Court of the State of California, in and for the City and County of San Francisco, are substantially correct copies thereof;"

intending and assuming in making said statement that

the copies of such purported judgments, orders and decrees alleged or claimed to have been rendered and entered would be considered by all parties in evidence in place of certified copies thereof; that, as plaintiff and its solicitors claimed and alleged all such purported judgments, orders and proceedings in said action of John S. Bell vs. George Staacke et al, claimed by defendants to have been made after the entry of the first judgment were invalid, and void for want of jurisdiction, they did not intend to admit or to make any stipulation or admission that might be construed to admit any jurisdiction on the part of either said Superior or Supreme Courts of the State of California subsequent to the entry of said first judgment or to admit the validity of any purported or pretended judgments, orders or proceedings in said action of John S. Bell vs. George Staacke et al., after the entry of said first judgment; and deponent as solicitor for plaintiff did, to the best of his knowledge, recollection and belief, limit the admission and stipulation made in open court as hereinabove stated, and as stated in his affidavit dated the 18th day of November, 1913, used on this motion.

James L. Crittenden.

Subscribed and sworn to before me this 5th day of December, A.*D. 1913.

Flora Hall, Notary Public in and for the City and County of San Francisco, State of California.

(Seal.)

Received copy of the within affidavit of James L. Crittenden, is hereby admitted at Los Angeles in open Court this sixth day of December, 1913.

T. Z. Blakeman, Solicitor for certain defendants. Peter J. Crosby, Solicitor for certain defendants. Charles W. Slack, Chauncey S. Goodrich, Solicitors for certain defendants.

(Endorsed.) No. 140 Civil. In Equity. Affidavit in Reply, James L. Crittenden on Motion for Modification of Decree. Filed December 6, 1913. Wm. M. Van Dyke, Clerk, By C. E. Scott, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

This cause came on this day to be heard on motion of the complainant to modify the following recital contained in the Decree heretofore rendered and entered in this cause on the 21st day of July, 1913, namely:

"And at the said hearing, it being admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of California in and for the County of Santa Barbara, and of the Superior Court of the State of California in and for the City and County of San Francisco, were rendered, made and entered, and all the proceedings taken and acts done thereunder, were taken and done substantially as set forth and described in each the said several answers, and particularly in the first defense set out and made in the said joint and several answer of the defendants W. P. Hammon and F. C. Van Deirse."

and the Court being fully advised in the premises, it is considered, adjudged and decreed that said recital be, and the same hereby is modified by adding thereto the following:

"But the complainant did not stipulate or admit that such judgments or decrees were valid or binding, or that the said several courts had jurisdiction to render or enter the same."

It is further ordered and decreed that this modification and order be entered nunc pro tunc as of July 21, 1913.

Done in open court this 8th day of December, A. D. 1913.

Frank H. Rudkin, Judge.

Decree entered and recorded December 8th, 1913.

Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

(Endorsed.) No. 140 Civil. United States District Court Southern District of California, Southern Division. U. S. Oil and Land Company vs. Teresa Bell, etc., et al. Modification of Decree. Filed De-

cember 8, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

At a stated term, to-wit: the July Term, A. D., 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Monday, the eighth day of December, in the year of our Lord, one thousand nine hundred and thirteen.

Present: The Honorable Frank H. Rudkin, District Judge. U. S. Oil & Land Company, Complainant, vs. Teresa Bell, etc., et al., Defendants. No. 140 Civil S. D.

Chauncey S. Goodrich, Esq., appearing as counsel for defendants, and no counsel appearing on behalf of complainant; an amendment nunc pro tunc as of July 21, 1913, to the decree heretofore made and entered herein is now signed and filed in open court and directed to be entered, and thereupon it is by the court ordered that the motion to modify said decree be, and the same hereby is denied, except as to the matters and things covered by the amendment to said decree this day signed and filed herein. Said amendment to the decree is as follows, to-wit:

(Amendment to Decree omitted, as having been hereinbefore copied in this Transcript.)

(TITLE OF COURT AND CAUSE.)

Assignment of Errors.

U. S. Oil & Land Company, the above-named complainant and appellant, hereby assigns errors in the decree of the District Court of the United States in and for the Southern District of California, Southern Division, dismissing complainant's Bill of Complaint in the above-entitled cause, dated the seventeenth day of July, 1913, and entered on the twenty-first day of July, 1913, and modified by an order and decree dated and entered nunc pro tunc as of July 21, 1913, on the eighth day of December, 1913, in the following particulars:

First: That the Court erred in holding and deciding

that the relations between John S. Bell, his grantees and those claiming by, through and under him and them, including the complainant herein, on the one hand, and George Staacke and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, their successors and assigns on the other hand, and the determination of their respective rights, titles, interests, estates and claims, both in law and in equity, to the real property described in paragraph one of complainant's Bill of Complaint herein were not fully and completely or at all, found, declared and decided in the decision and findings of fact made and filed on the sixth day of March, 1901, and on the seventh day of June, 1901, in the Superior Court of the State of California in and for the County of Santa Barbara in action number 2826, entitled "John S. Bell, plaintiff, vs. George Staacke, George Staacke and John W. C. Maxwell as executors of the last will and testament of Thomas Bell, deceased, and Louis Jones, defendants," and in which Teresa Bell as administratrix of the estate of Thomas Bell, deceased, became and was a substituted party defendant in the place and stead of George Staacke and John W. C. Maxwell as executors of the last will and testament of Thomas Bell, deceased; and that said relations between said parties plaintiff and defendant, their successors and assigns, and the determination of their respective rights, titles, interests, estates and claims were not fully, completely and finally or at all determined and adjudicated with respect to said real property in and by the decree entered in said action number 2826 in said Superior Court on July 9, 1901, and which decree was affirmed by the dismissal of the appeal of the defendants therefrom in the Supreme Court of California on September 16, 1902.

Second: That the Court erred in holding and deciding that the Superior Court of the State of California in and for the County of Santa Barbara and the Supreme Court of California, or either of them, had any further jurisdiction of said action number 2826, entitled as aforesaid, in said Superior Court on and after

the nineteenth day of July, 1901.

Third: That the Court erred in holding and deciding that the Superior Court of the State of California in and for the County of Santa Barbara had jurisdiction to hear and try defendants' motion for an order granting a new trial in said action number 2826, entitled as aforesaid in said Superior Court.

Fourth: That the Court erred in holding and deciding that the Supreme Court of California had jurisdiction of defendants' appeal from the order of the Superior Court of the State of California in and for the County of Santa Barbara made and entered on the seventh day of June, 1901, denying defendants' motion for a new trial in said action number 2826 entitled as aforesaid in said Superior Court.

Fifth: That the Court erred in holding and deciding that the Supreme Court of California had any jurisdiction of defendants' appeal from the order of the Superior Court of the State of California in and for the County of Santa Barbara made and entered on the seventh day of June, 1901, denying defendants' motion for a new trial in said action number 2826 entitled as aforesaid in said Superior Court, and had any jurisdiction to reverse said order denying said motion for a new trial and had any jurisdiction to remand said action to said Superior Court for a new trial.

Sixth: That the Court erred in holding and deciding that the order and judgment of the Supreme Court of the State of California ordering and granting a new trial as aforesaid gave and conferred any jurisdiction, power or authority to and upon the Superior Court of the State of California in and for the County of Santa Barbara to retry upon the merits or at all said action number 2826 entitled as aforesaid in said Superior Court, and also erred in holding and deciding that said order and judgment of said Supreme Court were, and each of them was, not null and void for want of jurisdiction.

Seventh: That the Court erred in holding and deciding that the judgment and decree made and rendered

on the seventeenth day of October, 1904, and entered on the twenty-sixth day of October, 1904, in the Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 entitled as aforesaid in said Superior Court, upon the retrial of said action, was not, and all the proceedings, matters and things had and done upon the retrial thereof were not and each of them was not wholly null, void and of no force and effect for want of jurisdiction.

Eighth: That the Court erred in holding and deciding that the order of sale contained in said decree made on the seventeenth day of October, 1904, and entered on the twenty-sixth day of October, 1904, in the Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 entitled as aforesaid in said Superior Court and the sale made thereunder of the real property described in paragraph one of complainant's Bill of Complaint herein are not and were not and each of them is not and was not wholly null, void and of no force and effect for want of jurisdiction.

Ninth: That the Court erred in holding and deciding that the Superior Court of the State of California in and for the County of Santa Barbara had any jurisdiction in any proceedings in said action number 2826 entitled as aforesaid in said Superior Court subsequent to the making and entry of said judgment, decree and order of sale upon the retrial of said action number 2826 as aforesaid, and in holding and deciding that any of such proceedings, orders and things had, made and done by Said Superior Court in said action subsequent to said judgment, decree and order of sale or in pursuance thereto or under the authority thereof were not and are not and each of them was not and is not wholly null, void and of no force and effect.

Tenth: That the Court erred in holding and deciding that the Supreme Court of the State of California had any jurisdiction to hear and determine any question or questions and to try and decide any issue or issues, either of law or of fact, raised by the appeals

from said judgment made on the seventeenth day of October, 1904, and entered on the twenty-sixth day of October, 1904, in the Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 entitled as aforesaid in said Superior Court upon the retrial of said action, and from the order of said Superior Court made and entered on the twenty-fourth day of June, 1905, denying plaintiff's motion for a new trial, and that the Court erred in not holding and deciding that the decisions, judgments and decrees of said Supreme Court of California upon said appeals were wholly null, void and of no force and effect for want of jurisdiction.

Eleventh: That the Court erred in holding and deciding that the relations between the complainant herein on the one hand and the said George Staacke and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, their successors and assigns on the other hand in connection with and the determination of their respective rights, titles, interests, estates and claims with reference to the real property described in paragraph one of complainant's Bill of Complaint herein were not fully, finally and completely or at all determined by the decision and decree made and entered in the Superior Court of the State of California in and for the County of Santa Barbara in action number 4424 entitled "Kate M. Bell and James L. Crittenden, plaintiffs, vs. San Francisco Savings Union, Edward B. Pond, Thaddeus B. Kent, George Staacke, Teresa Bell, Thomas Frederick Bell, Marie Teresa Bell, Robina Bell, Muriel Bell, Reginald Bell and Eustace Bell, Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, John Doe, Richard Roe, Jane Doe, Mary Roe and Mercantile Trust Company of San Francisco, a corporation, defendants, and U. S. Oil & Land Company, defendant to cross-complaint.

Twelfth: That the Court erred in holding and deciding that the decision and the judgment and decree made and entered on the fourteenth day of March, 1905,

in the Superior Court of the State of California in and for the County of Santa Barbara aforesaid in said action number 4424 entitled in said Superior Court as aforesaid were not the last final and controlling decision, judgment and decree upon and with respect to all allegations, matters and things therein in issue which were then in issue between the same parties or their successors in interest in action number 2826 in the Superior Court of the State of California in and for the County of Santa Barbara entitled "John S. Bell, plaintiff, vs. George Staacke, George Staacke and John W. C. Maxwell as executors of the last will and testament of Thomas Bell, deceased," and Teresa Bell as special administratrix of the estate of Thomas Bell, deceased, and later as the administratrix of the estate of Thomas Bell, deceased, with the will annexed in place of George Staacke and John W. C. Maxwell as executors of the last will and testament of Thomas Bell, deceased, and with reference to the determination of the rights, titles, interests, estates and claims, both in law and in equity, between John S. Bell and his grantees on the one hand, and said defendants George Staacke and Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed on the other hand, with respect to the real property described in paragraph one of complainant's Bill of Complaint and to all or any part thereof and which constituted the subject matter of both actions number 2826 and number 4424.

Thirteenth: That the Court erred in holding and deciding that Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed did not pay the indebtedness due the San Francisco Savings Union upon the note of George Staacke to said San Francisco Savings Union for sixty thousand dollars (\$60,000), the payment of which was guaranteed by the written contract of said Thomas Bell, deceased, endorsed upon said note and secured by deed of trust held by the Mercantile Trust Company as trustee and the successor of Henry C. Campbell, Thaddeus B. Kent and Edward B. Pond as trustees under the deed of trust

executed by George Staacke to said Henry C. Campbell and Thaddeus B. Kent of the property described in paragraph one of complainant's Bill of Complaint and of the 4,000-acre tract belonging to said Thomas Bell as a voluntary discharge of the liability of the estate of Thomas Bell to personally pay said indebtedness under its guaranty contract as aforesaid.

Fourteenth: That the Court erred in holding and deciding that said payment of said indebtedness by said Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, to said San Francisco Savings Union as aforesaid was made pursuant to and in satisfaction and discharge of the judgment and decree made on the fourteenth day of March, 1905, in the Superior Court of the State of California in and for the County of Santa Barbara in action number 4424 entitled as aforesaid in said Superior Court.

Fifteenth: That the Court erred in holding and deciding that the said Teresa Bell became and was the owner of any right, title, interest or estate belonging to John S. Bell or the grantees of John S. Bell, including the complainant herein, of, in or to the real property described in paragraph one of complainant's Bill of Complaint herein under and by virtue of the order of sale contained in the decree entered on the twenty-sixth day of October, 1904, in the Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 entitled as aforesaid and under and by virtue of the sale and the conveyance attempted to be made thereunder.

Sixteenth: That the Court erred in holding and deciding that said real property described in paragraph one of complainant's Bill of Complaint herein was sold and conveyed to Teresa Bell as administratrix of the estate of Thomas Bell, deceased with the will annexed under and by virtue of the deed of trust from George Staacke to Henry C. Campbell and Thaddeus B. Kent or assigns upon default in the payment of the indebtedness to the San Francisco Savings Union which it

was given to secure or in pursuance of any terms, conditions or directions for the sale of said real property in default of the payment of said indebtedness which were contained in said deed of trust.

Seventeenth: That the Court erred in holding and deciding that the reconveyance of the real property described in paragraph one of complainant's Bill of Complaint herein by the trustee of the San Francisco Savings Union to Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed upon the payment of the indebtedness due the San Francisco Savings Union from the estate of Thomas Bell, deceased, was made pursuant to any of the terms and directions for the execution of said trust deed contained in the decree of the Superior Court of the State of California in and for the County of Santa Barbara in said action number 4424 entitled as aforesaid and that said reconveyance of said real property as aforesaid was made in satisfaction of said judgment and decree in said action number 4424.

Eighteenth: That the Court erred in holding and deciding that the reconveyance from the Mercantile Trust Company, trustee as aforesaid of said real property described in paragraph one of complainant's Bill of Complaint herein, to Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed was not made to her as the successor of George Staacke in and to the trust of and concerning said real property for and on behalf of the grantees of John S. Bell, including the complainant herein, and as the involuntary trustee thereof under the terms and conditions and for the purposes found, stated and declared in the decision and findings of fact made and entered by the Superior Court of the State of California in and for the County of Santa Barbara in said action number 4424.

Nineteenth: That the Court erred in holding and deciding that Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, and as the successor to and the involuntary trustee of

the trust created in George Staacke, as decided and found in and by the decisions and findings of fact made and entered in said action number 4424 in the Superior Court of the State of California in and for the County of Santa Barbara, entitled as aforesaid, with reference to the real property described in paragraph one of complainant's Bill of Complaint herein was not under the obligation of conveying said property to the grantees of John S. Bell, including the complainant herein, as their interests appeared by said decision and findings aforesaid.

Twentieth: That the Court erred in holding and deciding that Teresa Bell as administratrix and as such involuntary trustee of said real property described in paragraph one of complainant's Bill of Complaint was not under the obligation to account to said grantees of said John S. Bell and to the complainant herein, as their interests might appear, for the present value of said real property and for the rents, issues and profits accruing therefrom since the date of said reconveyance to her as such involuntary trustee by said Mercantile Trust Company as aforesaid, in the event said involuntary trustee had conveyed said real property to purchasers without notice and for value.

Twenty-first: That the Court erred in sustaining the defenses set up in the joint and several answers of Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed, George Henry Howard, O. H. Harshbarger, George Henry Howard as executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell.

Twenty-second: That the Court erred in sustaining the special defenses set up as pleas in the answer of the defendants W. P. Hammon and F. C. van Deirse.

Twenty-third: That the Court erred in holding and

deciding that a rehearing was granted by the Supreme Court of the State of California in bank in said action number 2826 in said Superior Court of the State of California in and for the County of Santa Barbara entitled as aforesaid.

Twenty-fourth: That the Court erred in holding and deciding that the order denying plaintiff's motion for a new trial was reversed and that a new trial was awarded by said Supreme Court of California in said action number 2826 entitled as aforesaid, for the reason that said Supreme Court had no jurisdiction of said order denying said motion for a new trial or of any appeal therefrom, and also for the reason that no notice of intention to move for a new trial had ever been given, served or filed therein as required by law, and also for the reason that no valid appeal had ever been taken from the judgment in said action number 2826 and that said judgment therein had become final, also for the reason that under the Constitution and laws of the State of California upon the affirmance of the judgment in said action number 2826 by the decision of said Supreme Court of the State of California dismissing the appeal from said judgment dated the sixteenth day of September, 1902, said judgment had become and was a final judgment at and after the expiration of thirty days thereafter, and no decision or order made by said Supreme Court on appeal from said order denying a new trial could vacate, set aside, modify or defeat said judgment or any of the provisions thereof.

Twenty-fifth: That the Court erred in holding and deciding that the deed executed by George Staacke to Catherine M. Bell and James L. Crittenden under and in pursuance to the judgment and decree dated the ninth day of July, 1901, in said action number 2826 was executed and deposited in the registry of the Superior Court of Santa Barbara County, California, in order to obtain a stay of execution, for the reason that there are no admitted facts in the record to sustain such finding and decision.

Twenty-sixth: That the Court erred in holding and

deciding that there was a new trial in said action number 2826 subsequent to the judgment and decree entered in said action on the ninth day of July, 1901.

Twenty-seventh: That the Court erred in holding and deciding that the real property described in paragraph one of complainant's Bill of Complaint herein was sold at an execution sale and that Teresa Bell became the purchaser thereof at such sale and that such purchaser in due course received a deed to said real property from the commissioner who conducted said sale.

Twenty-eighth: That the Court erred in holding and deciding that the decree made and entered on the ninth day of July, 1901, in the Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 entitled as aforesaid was vacated by the Supreme Court of the State of California.

Twenty-ninth: That the Court erred in holding and deciding that another and different decree from that entered on July 9th, 1901, was thereafter made and entered in the Superior Court of the State of California in and for the County of Santa Barbara upon a retrial of said action number 2826 and that the same was later affirmed by the Supreme Court of the State of California.

Thirtieth: That the Court erred in holding and deciding that in and by the decree and judicial sale made under said decree entered upon said retrial of said action number 2826 every right, title and interest of John S. Bell and his successors in interest in and to the real property described in paragraph one of the Bill became vested in the purchaser, said Teresa Bell as administratrix of the estate of Thomas Bell, deceased, with the will annexed at said sale under the commissioner's deed.

Thirty-first: That the Court erred in holding and deciding that whether the Supreme Court of the State of California had jurisdiction to award a new trial in said action number 2826 after dismissing an appeal

from a final judgment depended solely and exclusively upon the Constitution and laws of the State of California.

Thirty-second: That the Court erred in holding and deciding that the title of the complainant herein and to the real property described in paragraph one of its Bill of Complaint did not depend solely and exclusively upon the Constitution and laws of the State of California and upon the decisions of the Supreme Court of California determining and settling the jurisdiction of said Supreme Court to hear, try and determine questions affecting the title to said real property in force and effect at the time when complainant purchased the same.

Thirty-third: That the Court erred in holding and deciding that in equity complainant could not claim under and by virtue of the judgment and decree entered in said action number 2826 on the ninth day of July, 1901, and under the judgment and decree entered in said action number 4424 at one and the same time.

Thirty-fourth: That the Court erred in holding and deciding that complainant's Bill of Complaint herein was without equity.

Thirty-fifth: That the Court erred in holding and deciding that complainant's Bill of Complaint herein should be dismissed and in dismissing the same.

Thirty-sixth: That the Court erred in sustaining the said special defenses of the several defendants to the Bill of Complaint for the following and each of the following reasons, to-wit: (1) That the complainant was and is entitled to a judgment and decree as prayed for in its Bill upon the facts and matters alleged in said Bill and admitted by the several answers of the several defendants or confessed to be true by said defendants by their omission and failure to deny the allegations and statements of fact and matters contained in said Bill; (2) that upon the facts and matters set forth and alleged and admitted and confessed by the defendants to be true the said Bill of Complaint was meritorious and the complainant was entitled to have a trial on the merits; (3) that it was admitted and confessed in and

by the several answers of each and all of the defendants that the judgment and decree rendered and entered in said action number 2826 entitled as aforesaid in the Superior Court of the State of California in and for the County of Santa Barbara on the ninth day of July, 1901, was final and that no appeal from said judgment of said Superior Court last mentioned was taken within the time required by law and that no notice of intention to move for a new trial was given, served or filed within the time required and limited by law; (4) that it appears by and from the facts and matters alleged in said Bill and admitted or confessed to be true in and by all of the defendants in their several answers that the said Superior Court of the State of California in and for the County of Santa Barbara and the said Supreme Court of the State of California and each of them had no jurisdiction whatever after the nineteenth day of July, 1901, to modify, change or reverse said judgment and decree entered on the ninth day of July, 1901, or to set aside any order theretofore made denying a new trial in said action, or to grant a new trial in said action, or to try or retry said action; (5) that it is and was admitted and confessed in and by the several answers of all of the defendants that the judgment and decree rendered and entered in said action number 4424 in and by said Superior Court of the State of California in and for the County of Santa Barbara was final and conclusive and binding upon each and all of the parties plaintiff and defendant therein and thereto and upon all of the defendants in and to this suit; (6) that each, every and all of the rights, titles, interests and claims of each and all of the parties to said action number 2826 was and were finally adjudicated, and determined in and by the judgment and decree in said action number 4424 and were not and could not be changed, altered or affected by any judgment or decree in said action number 2826 as no judgment or decree in said action number 2826 was pleaded in bar or otherwise or at all by any of the parties to said action number 2826; (7) that there is no provision or statement in the judgment and decree in said action number 4424 mentioning or referring to

or exempting or excepting the judgment and decree in said action number 2826 from said judgment and decree in said action number 4424 or from any of the provisions thereof or from the force or effect thereof; (8) that by and under the judgment and decree in said action number 4424 the 10,000-acre tract described in paragraph one of said Bill should be sold at public auction in the manner prescribed in and by said decree and that the sale thereof should be subject to confirmation and that the proceeds of the sale thereof should be applied only so far as necessary to pay the indebtedness adjudged therein to be due to the San Francisco Savings Union and the balance paid over to George Staacke, his heirs or assigns, the said George Staacke having been, in and by said findings and decision of said Superior Court in action number 4424 entitled as aforesaid, adjudged to have been trustee of said 10,000-acre tract for said John S. Bell and his successors in interest; (9) that the right, if any existed, on the part of the defendants or any of the defendants in and to said action number 2826 to claim or assert against the complainant in this suit any benefit or advantage by reason of or under any judgment or decree rendered in said action number 2826 was forever lost and barred by reason of their failure and neglect to plead said judgment in bar or as *res adjudicata* in said action number 4424; (10) that it is admitted and confessed in and by the several answers of the several defendants; (a) that the complainant is a citizen of the State of Arizona and all of the defendants are citizens of the State of California; (b) that each of said defendants claims and asserts an estate or interest in said 10,000-acre tract, piece and parcel of land adverse to the complainant; (c) that on the twenty-ninth day of June, 1901, a judgment and decree was duly made, rendered and filed in and by said Superior Court of the State of California in and for the County of Santa Barbara in said action number 2826 in favor of the plaintiff in said action—and was thereafter duly entered on the ninth day of July, 1901, and was in the words and figures set forth in paragraph

seven of said Bill—that the appeal thereafter taken from said judgment was dismissed by the Supreme Court of the State of California for want of jurisdiction—that findings of fact and conclusions of law were filed in said action number 2826 on the sixth day of March, 1901, and thereafter on the seventh day of June, 1901, additional findings of fact and conclusions of law were made, signed and filed by the Judge of said Superior Court of Santa Barbara County and by said Superior Court in said action number 2826—that no motion for a new trial and no notice of intention to move for a new trial in said action number 2826 was made, given, served or filed on or after the seventh day of June, 1901—that it was declared and provided in and by the laws of the State of California and in and by section 659 of the Code of Civil Procedure of California from the first day of July, 1874, until the twentieth day of May, 1907, that “the party intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the Court or referee, if the action were tried without a jury, file with the clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the Court, or a bill of exceptions or a statement of the case”—that each and all of the defendants and attorneys for the defendants in said action number 2826 had notice and well knew on and before the ninth day of July, 1901, that said findings and said additional findings and conclusions of law and said judgment and decree had been rendered and filed at the times and as in complainant’s Bill alleged and shown—that it is provided and declared in and by section 955 of said Code of Civil Procedure of California that “the dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal,” and that said provision of said section 955 has been in full force and effect since 1872—that said appeal taken

by the defendants from said judgment in said action number 2826 when dismissed by the Supreme Court was not so dismissed without prejudice to another or any other appeal and was duly made and rendered in bank in and by said Supreme Court of the State of California on the sixteenth day of September, 1902—that said findings of fact and conclusions of law and additional findings of fact and conclusions of law are in the words and figures set forth in paragraph eight of complainant's Bill of Complaint—that on the eighteenth day of September, 1902, an undivided one-half of, in and to said tract, piece and parcel of land of 10,000 and 2-10 acres, the property described in paragraph one of complainant's Bill, was sold, granted, transferred and conveyed in fee simple for a valuable consideration to complainant herein by James L. Crittenden and Nina D. Crittenden, his wife, and by a good and sufficient deed signed and acknowledged by them, which said deed was thereafter duly recorded on the twenty-sixth day of September, 1902, in the office of the County Recorder of Santa Barbara County, State of California—(d) that it was well settled in and by many decisions of the Supreme Court of the State of California, both in department and in bank, on and prior to the eighteenth and twenty-sixth days of September, 1902, that the right to move for a new trial was lost and terminated upon the expiration of ten days after the party against whom the decision was rendered had notice or knowledge of the decision and also that any notice of intention to move for a new trial made, given, served and filed before the last findings of fact and conclusions of law were made and filed by the Court was premature and ineffective for any purpose and that the Court had no jurisdiction, power or authority by reason of any such notice and must deny the motion, and that the Supreme Court did not have any jurisdiction, power or authority on any appeal from any order denying such motion to review or set aside the decision of the Court made on such motion or the order denying such motion, and had no jurisdiction, power or authority to reverse such or-

der or grant a new trial; (e) that the complainant was not a party in or to said action number 2826 and was made a party to said action number 4424 by a cross-complaint filed by said defendants therein, and that in said action number 4424 all of the rights, titles, interests and claims of each and all of the parties in and to said action number 2826 were raised and involved and tried as issues in said action number 4424 and on the trial thereof and were and are included in and adjudicated by the findings of fact, judgment and decree rendered in said action number 4424, which said judgment and decree became and is final and conclusive upon all of the parties to each of said actions.

Thirty-seventh: That the Court erred in dismissing the Bill herein on the ground said Bill was without equity, for the reason that complainant was and is entitled to a decree as prayed for in its Bill and also for the reason that the facts and matters alleged in said Bill and admitted and confessed by the several answers of said defendants entitled the complainant to a decree as prayed for in its Bill, and also for each of the reasons hereinabove in the thirty-sixth assignment of error stated, the same being hereby referred to and made a part of this assignment of error.

Thirty-eighth: That the Court erred in holding and deciding in and by its decree that at the hearing it was admitted and stipulated by the complainant that each and all of the judgments, orders and decrees of the Supreme Court of the State of California, of the Superior Court of the State of California in and for the County of Santa Barbara and of the Superior Court of the State of California in and for the City and County of San Francisco were rendered, made and entered, and all the proceedings taken and acts done thereunder were taken and done substantially as set forth and described in each the said several answers and particularly in the first defense set out and made in the joint and several answer of the defendants W. P. Hammon and F. C. van Deinse, whereas it was not so stipulated and agreed by the complainant or by the solicitors or counsel for com-

plainant or by any of them and the minutes of said Court do not show any such stipulation, and whereas the only admission and stipulation on said hearing was made by both the complainant and the defendants and merely stipulated and admitted that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California in and for the County of Santa Barbara and the Superior Court of the State of California in and for the City and County of San Francisco were substantially correct copies thereof.

Thirty-ninth: That the Court erred in not holding and finding in and by said decree that at the hearing it was admitted and stipulated by the complainant and the defendants that the papers purporting to be copies of judgments, orders and decrees alleged or claimed to have been rendered and entered in the Supreme Court of the State of California, the Superior Court of the State of California in and for the County of Santa Barbara and the Superior Court of the State of California in and for the City and County of San Francisco were substantially correct copies thereof.

Wherefore, complainant prays that the decree of the District Court of the United States for the District of Southern California, Southern Division, be reversed.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley and Jacob M. Blake, of Counsel.

Dated at San Francisco, this — day of January, 1914.

(Endorsed.) Assignment of Errors. Filed Jan. 14, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Petition for Appeal.

The above-named complainant and appellant, conceiving itself aggrieved by the decree made and entered on

the seventeenth day of July, 1913, and entered and recorded on the twenty-first day of July, 1913, and modified by an order and decree made and rendered and ordered entered nunc pro tunc as of July 21, 1913, on the eighth day of December, 1913, in the above-entitled cause, does hereby appeal from said decree so made, rendered, entered and modified as aforesaid and from every part thereof to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which such decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley and Jacob M. Blake, of Counsel.

The foregoing claim of appeal is allowed, bond to be given in sum of \$500.

Erskine M. Ross, Circuit Judge.

Dated at Los Angeles this 14th day of January, 1914.

(Endorsed.) No. 140 Civil. In Equity. Petition for Appeal and Order Allowing. Filed Jan. 14, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

Know all men by these presents: That we, U. S. Oil & Land Company, a corporation, as principal, and Equitable Surety Company, a corporation, organized and existing under the laws of the State of Missouri, and authorized to do business in the State of California, as sureties, are held and firmly bound unto Teresa Bell, as Administratrix of the Estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele

Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman and Teresa Bell, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerais and P. J. Crosby, W. P. Hammon, F. C. van Deinse, Associated Oil Company, Union Oil Company, Catherine M. Bell, also known as Kate M. Bell, in the full and just sum of Five Hundred (500) dollars, to be paid to the said Teresa Bell, as Administratrix of the estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keys, Thomas N. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, Teresa Bell, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell, W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerais, P. J. Crosby, W. P. Hammon, F. C. van Deinse, Associated Oil Company, Union Oil Company and Catherine M. Bell, also known as Kate M. Bell, certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of January, in the year of our Lord One Thousand Nine Hundred and Fourteen.

Whereas, lately at a District Court of the United States, for the Southern District of California, Southern Division, in a suit depending in said Court, between U. S. Oil & Land Company, a corporation, as complainant and Teresa Bell, as Administratrix of the estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard, as the executor of the will of George Staacke, deceased, Robina Vell-

guth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, Teresa Bell, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auze-rais, P. J. Crosby, W. P. Hammon, F. C. van Deinse, Associated Oil Company, Union Oil Company and Catherine M. Bell, also known as Kate M. Bell, et al., as defendants, a decree of dismissal was rendered against the said U. S. Oil & Land Company and the said U. S. Oil & Land Company having obtained from said Court allowance of an appeal to reverse the decree in the afore-said suit, and a citation directed to the said defendants, Teresa Bell, as Administratrix of the estate of Thomas Bell, deceased, George Henry Howard, O. H. Harsh-barger, George Henry Howard, as the executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Com-pany, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Fran-cisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, Teresa Bell, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auze-rais, P. J. Crosby, W. P. Hammon, F. C. van Deinse, Associated Oil Company, Union Oil Company and Catherine M. Bell, also known as Kate M. Bell, citing and admonish-ing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California

Now, the condition of the above obligation is such that if the said U. S. Oil & Land Company shall prose-cute its appeal from said decree to effect, and answer all costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

U. S. Oil & Land Company,

By James L. Crittenden, President.
 (Corporate Seal) A. D. Crittenden, Secretary.
 (Seal)
 Equitable Surety Company, (Seal)
 By A. B. Reddie,
 (Seal)
 Attorney-in-fact.
 (Corporate Seal)

The foregoing bond is approved this January 14, 1914.
 Ross, Circuit Judge.

(Endorsed.) No. 140. In Equity. Bond on Appeal. Filed Jan. 14, 1914. Wm. M. Van Dyke, Clerk.
 By Chas. N. Williams, Deputy Clerk.

Title of Court and Cause. No. 140 Civil. In Equity.
 To the Clerk of said Court—Sir :

Please issue certified transcript of the record in the above entitled suit in equity to the United States Circuit Court of Appeals for the Ninth Circuit, to consist of Bill of Complaint, Subpoena and Alias Subpoenas, Joint and Several Demurrers of Defendant Teresa Bell, etc., et al., Joint and Several Answer of the Defendant Teresa Bell, etc., et al., the Joint and Several Demurrers of the Defendants Thomas Frederick Bell, et al., the Joint and Several Answer of the Defendants Thomas Frederick Bell, et al., Joint and Several Demurrers of the Defendants W. P. Hammon and F. C. Van Deinse, the Replications of Complainant to the Answers aforesaid, the Answer of the Defendant Associated Oil Company, the Demurrer of the Defendant Union Oil Company, the Order Overruling the last mentioned Demurrer, the Plea in Abatement of the Defendant Union Oil Company, the Joint and Several Plea and Answer of Defendants W. P. Hammon and F. C. Van Deinse, the Replication of complainant to the last mentioned Answer, the Order Overruling the Joint and Several Pleas and Motion for Judgment of Defendant W. P. Hammon and F. C. Van Deinse, the Order Denying Motion of Defendants Teresa Bell, etc., et al., for Judgment on Pleadings and assigning said defendants to answer the

bill and continuing said cause to be heard separately on question of certain judgments in the state courts, the Joint and Several Answer of Defendants W. P. Hammon and F. C. Van Deinse, the Decree of Dismissal, the Opinion and Decision thereon, Complainant's Notice of Motion for Order Modifying Said Decree of Dismissal, and Affidavit of James L. Crittenden on said Motion, Affidavit of Service of said Motion, omitting the Notice of Motion, the Affidavits of Chauncey S. Goodrich, Peter Crosby and T. Z. Blakeman in Opposition to Modify Decree of Dismissal, Copies of the Minute Orders in said Suit of March 10, 19, and 20, 1913, Order Modifying said Decree of Dismissal, Petition for Appeal, Assignment of Errors, Bond on Appeal, Citation, praecipe for Transcript.

In the preparation of the foregoing transcript care to be taken to comply with Rule 76 of Rules of Practice for the Courts of Equity of the United States.

Respectfully yours,

Richards & Carrier and
James L. Crittenden,
Solicitors for Complainant.

Barclay Henley and Jacob M. Blake, of Counsel.

Service of within praecipe for a transcript on appeal by receipt of a copy is hereby admitted this 15th day of January, 1914.

Charles W. Slack, Chauncey S. Goodrich,
Solicitors for W. P. Hammon and F. C. Van Deinse.

Edmund Tauszky,
Solicitor for Associated Oil Co.

• Due service of the within praecipe for a transcript on appeal by receipt of a copy thereof, is hereby admitted this 14th day of January, 1914.

Lewis W. Andrews, Thomas O. Toland,
Solicitor for defendant Union Oil Company.

Sullivan, Sullivan & Theo. J. Roche,
Solicitor for Catherine M. Bell.

United States of America, ss.

On this 16th day of January in the year of our Lord one thousand nine hundred and fourteen, personally

appeared before me Paul P. O'Brien, Deputy Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the subscriber, Jacob M. Blake, and makes oath that he delivered a true copy of the within Praeceptum for Transcript on Appeal to T. Z. Blakeman, solicitor for the defendants, Teresa Bell, as administratrix of the estate of Thomas Bell, deceased, George Henry Howard, O. H. Harshbarger, George Henry Howard as the Executor of the will of George Staacke, deceased, Robina Vellguth, Clarence Vellguth, Rauer's Law and Collection Company, Alexander D. Keyes, Thomas E. Palmer, Florence Adele Gibson, Mercantile Trust Company, San Francisco Savings Union, Savings Union Bank and Trust Company, Arthur S. Holman, Teresa Bell; and to Peter J. Crosby, solicitor for the defendants, Eustace Bell, Reginald Bell, Thomas Frederick Bell, Bessie M. Bell (wife of Thomas Frederick Bell), W. E. Bell, also known as Eustace Bell, John Lewellyn Auzerai, Peter J. Crosby; and to Chauncey S. Goodrich, one of the solicitors for the defendants W. P. Hammon and F. C. Van Deinse; and to Edmund Tauszky, solicitor for the defendant Associated Oil Company; and to Theo. J. Roche, one of the solicitors for the defendant Catherine M. Bell, also known as Kate M. Bell, and to each of them, at San Francisco, California, on the fifteenth day of January, 1914.

Jacob M. Blake.

Subscribed and sworn to before me at San Francisco, California, this 16th day of January, A. D. 1914.

(Seal)

Paul P. O'Brien,

Deputy Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

(Endorsed.) Praeceptum for Transcript on Appeal and Affidavit of Service. Filed Jan. 17, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

Praeipe for Incorporation of Additional Portions of
the Record Into the Transcript on Com-
plainant's Appeal.

To Wm. M. Van Dyke, Esq.,

Clerk of the above entitled District Court of the
United States:

You are hereby notified that the defendants and ap-
pellees W. P. Hammon and F. C. Van Deinse, in the
above entitled proceeding in equity, desire the following
additional portions of the record in such proceeding in-
corporated into the transcript of such record ordered,
and to be used, by the complainant on its appeal herein,
viz.: (a) The order overruling the joint and several
demurrers of the said defendants W. P. Hammon and
F. C. Van Deinse; (b) the opinion and decision on the
said demurrers and on the demurrers of other defend-
ants; (c) the joint and several motion of the said de-
fendants W. P. Hammon and F. C. Van Deinse for
judgment on plea and replication; (d) the affidavit in
reply of James L. Crittenden on motion for modifica-
tion of decree; (e) the minute order made by the Court
in the said proceeding on the 8th day of December, 1913,
and (f) this praecipe for additional portions of the
record.

And you are hereby requested to cause the said por-
tions of the record to be incorporated in the said tran-
script.

Dated this 17th day of January, 1914.

Yours, etc.,

Charles W. Slack and
Chauncey S. Goodrich,

Solicitors for the said defendants, W. P. Hammon and
F. C. Van Deinse.

Service of the within praecipe and of a copy thereof
is hereby admitted this 18th day of January, 1914.

Richards & Carrier and
James L. Crittenden,

Solicitors for Complainant and Appellant.

By Jacob M. Blake, of Counsel.

(Endorsed.) No. 140 Civil. Praeipie for Incorporation of Additional Portions of the Record into the Transcript on Complainant's Appeal. Filed Jan. 20, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

(TITLE OF COURT AND CAUSE.)

No. 140 Civil. In Equity.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing four hundred and eighty-nine (489) typewritten pages, numbered from 1 to 489 inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Bill of Complaint, Subpoena, Alias Subpoena, Joint and Several Demurrer of Defendants Teresa Bell, etc., et al., Joint and Several Answer of Defendants Teresa Bell, etc., et al., Joint and Several Demurrer of Defendants Thomas Frederick Bell, et al., Joint and Several Answer of Defendants Thomas Frederick Bell, et al., Joint and Several Demurrer of Defendants W. P. Hammon and F. C. Van Deinse, Replication to the Answer of Defendants Teresa Bell, etc., et al., Replication to the Answer of Defendants Thomas Frederick Bell, et al., Answer of Defendant Associated Oil Company, Demurrer of Defendant Union Oil Company of California, Opinion on Demurrers, Order Overruling Demurrers, Plea in Abatement of Defendant Union Oil Company of California, Joint and Several Plea and Answer Fortifying Plea of Defendants W. P. Hammon and F. C. Van Deinse, Replication to Answer of Defendants W. P. Hammon and F. C. Van Deinse, Joint and Several Motion of Defendants W. P. Hammon and F. C. Van Deinse for Judgment on Plea and Replication, Order Denying Motion for Judgment on the Pleadings, Order Denying Motion for Hearing on the Pleas and Answers of Defendants Teresa Bell, et al., Joint and Several Answer of Defendants W. P. Hammon and F. C. Van Deinse, Order of March 19, 1913, con-

tinuing hearing on special defenses, Order of March 20, 1913, continuing hearing on special defenses to 2 p. m. of that day, Order directing submission of cause on special defenses, Opinion and Decision, Decree, Notice of Motion for Modification of Decree and Affidavit of James L. Crittenden, Affidavit of Service of Notice of Motion for Modification of Decree and Affidavit of James L. Crittenden, Affidavit of T. Z. Blakeman in Opposition to Motion to Modify Decree; Affidavit of Peter J. Crosby in Opposition to Motion to Modify Decree, Affidavit of Chauncey S. Goodrich in Opposition to Motion to Modify Decree, Affidavit in Reply of James L. Crittenden on Motion for Modification of Decree, Modification of Decree, Order of December 8, 1913, Assignment of Errors, Petition for Appeal and Order Allowing Appeal, Bond on Appeal, Praecipe of Appellant for Transcript on Appeal and Affidavit of Service thereof, and Praecipe of Appellees for Incorporation of Additional Portions of the Record into Transcript on Appeal in the above and therein entitled cause, and that the same together constitute the record in said cause on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as specified in the Praecipies filed in my office on behalf of the appellants and appellees by their attorneys of record.

I do further certify that the cost of the foregoing record is \$274 25-100, the amount whereof has been paid me by the U. S. Oil & Land Company, a corporation, the complainant and appellant in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 3rd day of April, in the year of our Lord, one thousand nine hundred and fourteen, and of our Independence, the one hundred and thirty-eighth.

(Seal of said U. S. District Court.)

Wm. M. Van Dyke,

Clerk of the District Court of the United States of America, in and for the Southern District of California.